

Supreme Court, U. S.
FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,

Appellant,

vs.

WHITE MOTOR CORPORATION and
WHITE FARM EQUIPMENT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Docketed February 26, 1977

Probable Jurisdiction Noted October 3, 1977

APPENDIX

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RELEVANT DOCKET ENTRIES

Civ. 3-75-162: White Motor Corp. v. E. I. Malone,
Com'r of Labor et al

5-15-75—Filed Complaint.
Filed Civil Cover Sheet.
Issued Summons.
Case Assigned to Judge Alsop, per card No. 178.

5-20-75—Filed Summons returned served 5-16-75.

6-6-75—Filed ANSWER, with cert. of serv. by mail 6-5-75.

7-28-75—Filed Consent to Amendment of Complaint and Ac-
knowledgegment of Service of Amended Complaint, Amended
Complaint attached.
Filed Pltf's Notice of Motion and Motion for Pre-Trial
Conference. Noticed for hearing at St. Paul, Aug. 8, 1975
at 9:30 A.M. Aff. of serv. by mail 7-25-75 attached.

8-5-75—Filed AMENDED ANSWER. Aff. of serv. by mail
8-4-75 attached.

9-4-75—Filed copy of Order (Devitt-J; 9-4-75) of Direction
to the Clerk of Court that Civ. Case No. 3-75-178 is hereby
assigned to Judge Alsop, it being a companion case to Civ.
3-75-162.

9-29-75—Filed Pltf's Notice of Motion and Motion for an
Order granting summary judgment in favor of Pltfs, with
aff. of H. Herbert Phillips and Exhibits attached; return-
able 11-21-75 at 9:30 A.M. in St. Paul.

11-13-75—Filed Deft. E. I. Malone's Notice and Motion To
Stay Or Dismiss. Noticed for hearing November 21, 1975
at 9:30 A.M. before Judge Alsop at St. Paul. Aff. of serv.
by mail 11-10-75 attached.

11-18-75—Filed Affidavit of Stanley A. Enebo.
Filed Affidavit of Jon K. Murphy.

Filed Affidavit of Alfred H. Behrendt.

Filed Affidavit of Spencer Westerberg.

Filed Affidavit of Charles G. Dapper.

Filed Affidavit of Clarence Grose.

Filed Affidavit of Roy G. Pierce.

Filed Affidavit of William E. Peters.

Filed Affidavit of Emanuel Walstrom.

Filed Affidavit of William Preston.

Filed Affidavit of Mildred MacDonald.

Filed Affidavit of Donald W. Duffy.

Filed Certificate of Personal service on the above affidavits dated 11-17-75.

11-17-75—Filed Plaintiffs' Memorandum of Law In Opposition To Defendant's Motion To Dismiss Or Stay (Filed at counsel's request—who delivered original to J. Devitt).

11-25-75—Filed Copy of Record of hearing on Motion of Pltffs for summary judgment or in the alternative for a preliminary injunction heard 11-21-75 at Minneapolis: Argued, submitted and taken under advisement. Mr. Roy to submit responsive brief by 12-5-75 (12-12-75) Mr. Gerlach to reply 10 days after receipt of Mr. Roy's Brief on (the question whether the court on its own motion can convene a 3 Judge court) (Alsop-J) (Lindberg-Reporter).

12-3-75—Filed Reporter's Transcript of hearing on Motion November 21, 1975. (Lindberg-Reporter)

1-15-76—MINUTES OF PROCEEDINGS (Alsop, J.) Conference only.

3-19-76—ORDER & MEMORANDUM (Alsop, J; 3-18-76) that defendant's motion to abstain is in all respects denied; that plaintiffs' motion for an order granting summary judgment in favor of plaintiffs and against defendant, on issues tendered in Count I of plaintiffs' amended complaint is in

all respects denied; that plaintiffs' motion for an order granting a preliminary injunction, upon the grounds set forth in Count I of the amended complaint, enjoining the defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against pltfs. under Minn. Priv. Pension Act, M.S. 181B, and from taking or continuing to take any other action to enforce said statute against pltfs. pending final determination of this cause by this court, is in all respects denied. Copies of Order mailed to counsel. (local).

3-23-76—NOTICE OF APPEAL BY Pltffs. from Order entered March 18, 1976 in which District Court inter alia overruled the Pltffs' Motion for a Preliminary injunction.

UNDERTAKING FOR COSTS \$250.00 United Pacific Insurance Company.

Mailed two cert. copies of Notice of Appeal, two cert. copies of Memorandum and Order filed 3-19-76, and two cert. copies of Docket Entries herein with covering letter to Robert C. Tucker, Clerk, U. S. Court of Appeals For the Eighth Circuit, U.S. Court House, St. Louis, Missouri 63101.

NOTICE TO COUNSEL with copy of Notice of Appeal.

4-16-76—PLTFF'S NOTICE OF MOTION AT A TIME AND PLACE TO BE DETERMINED BY COURT, will move for Order amending Order dated March 18, 1976. Aff. of serv. 4-15-76. Memorandum In Support of Pltffs' Motion For An Order Under 28 USC. 1292(b) delivered to Court.

12-2-76—ORDER & MEMORANDUM OF COURT OF APPEALS, reversing Order of District Court and ruling that Minnesota Pension Act is preempted.

12-7-76—NOTICE OF APPEAL filed with Court of Appeals.

2-26-77—DOCKETING OF APPEAL by United States Supreme Court.

10-3-77—PROBABLE JURISDICTION NOTED.

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75-162

WHITE MOTOR CORPORATION
and
WHITE FARM EQUIPMENT COMPANY,
Plaintiffs,

vs.
E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,
Defendant.

AMENDED COMPLAINT

Plaintiffs, White Motor Corporation and White Farm Equipment Company, for their Amended Complaint against the Defendant, allege:

JURISDICTION

1. The jurisdiction of this Court over this action is founded upon 28 U.S.C. §§ 1331 and 1332, and upon 28 U.S.C. §§ 2201-2202 (the Federal Declaratory Judgment Act). In Counts I, II, III, IV and V of the Amended Complaint, Plaintiffs challenge the constitutionality of the "Private Pension Benefits Protection Act" (Laws of Minnesota, 1974, Ch. 437; coded as Minn. Stat., 1974 §§ 181B.01-181B.17), the ground of such challenge being that such statute (hereafter referred to as "the Minnesota Pension Act") violates the United States Constitution. In Counts VI, VII and VIII Plaintiffs

challenge the Minnesota Pension Act on the ground that such statute violates the Minnesota Constitution. This Court has jurisdiction over the cause of action alleged in such Counts by virtue of its pendent and ancillary jurisdiction. The amount in controversy exceeds Ten Thousand Dollars (\$10,000) exclusive of interest and costs. Venue is proper by virtue of 28 U.S.C. § 1391(b).

COUNT I

2. Plaintiff White Motor Corporation (hereinafter referred to as "White Motor") is a corporation which is incorporated under the laws of the State of Ohio and which has its principal place of business in Cleveland, in the State of Ohio.

3. Plaintiff White Farm Equipment Company (hereinafter referred to as "White Farm") is a corporation which is incorporated under the laws of the State of Delaware and which has its principal place of business in Oakbrook, in the State of Illinois. White Farm is, and at all times referred to herein was, a wholly owned subsidiary of White Motor.

4. Defendant E. I. Malone (hereinafter referred to as "Malone") is the Commissioner of Labor and Industry of the State of Minnesota, his official residence being in St. Paul, in the State of Minnesota. As Commissioner of Labor and Industry, Malone is charged with the enforcement of the Minnesota Pension Act.

5. White Farm is, and at all times referred to herein was, engaged in the manufacture and sale, in interstate commerce, of farm equipment and machinery, maintaining large facilities in Hopkins, Minnesota, South Bend, Indiana, and Charles City, Iowa. In operating the Hopkins, Minnesota facility, White Farm regularly and necessarily obtains and receives equipment, tools, and supplies from various states of the United States outside of Minnesota which are shipped across state

lines and interstate commerce to White Farm's Hopkins facility. White Farm regularly and necessarily uses the interstate mails, other interstate communications systems and interstate transportation systems in operating the Hopkins facility. White Farm's Hopkins operations are substantial, its gross sales for the year 1974 being in excess of \$66,000,000. White Farm's operations in South Bend, Indiana and Charles City, Iowa are similar in nature, extent, and involvement in interstate commerce. Until approximately June 1972, White Farm also operated a facility in Minneapolis, Minnesota, which had a substantial impact on, and involvement in, interstate commerce.

6. White Motor is, and at all times referred to herein was, engaged in the manufacture and sale, in interstate commerce, of motor trucks and motor truck parts, maintaining its principal office in Cleveland, Ohio, and manufacturing plants in the States of Ohio, Pennsylvania and Utah. In operating said plants, White Motor regularly obtains and receives equipment, raw materials, tools and supplies from various states of the United States which are shipped across state lines in interstate commerce to White Motor's various plants. White Motor regularly and necessarily uses the interstate mails, other interstate communications systems and interstate transportation systems in operating its plants and facilities. White Motor's operations are substantial, its gross sales for the year 1974 totaling approximately \$1,390,000,000.

7. Effective May 1, 1971, White Farm and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its local unions (hereafter collectively referred to as the "UAW") entered into collective bargaining agreements covering the terms and conditions of employment of White Farm employees at White Farm's

Minneapolis and Hopkins, Minnesota facilities. As part of those collective bargaining agreements, White Farm and the UAW agreed to a Pension Agreement and Plan (hereinafter referred to as "the Pension Plan"), covering White Farm employees. A copy of the Pension Plan is attached hereto as Exhibit A and made a part hereof. In connection with the negotiation of the collective bargaining agreements, White Farm and White Motor entered into a written "Pension Guarantee", (hereinafter referred to as "Pension Guarantee"), pertaining to the Pension Plan and setting forth certain conditions to be met in the event there should be a closing of the White Farm plants in Minneapolis and Hopkins, Minnesota and a resulting termination of the Pension Plan.

8. Effective April 10, 1974, the State of Minnesota adopted the Minnesota Pension Act referred to in paragraph 1 of this Amended Complaint, which Act purports to establish, in the event of the termination of pension plans pertaining to certain Minnesota employers and employees, certain charges and liabilities against the employers and in favor of the employees irrespective of the terms and conditions of the affected pension plans, including pension plans established through the process of collective bargaining.

9. On or about June 30, 1972, White Farm closed its Minneapolis facility. At that time (June 30, 1972) White Farm terminated the Pension Plan. Arbitration and court litigation concerning said termination thereafter ensued between the UAW and White Farm and White Motor. On or about August 30, 1973, an arbitration award was entered ruling that the Pension Plan could not be effectively terminated prior to May 1, 1974, which arbitration award was thereafter confirmed in court litigation testing the award. By reason of such arbitration award, White Farm, after the award, took action again

to terminate the Pension Plan, and said Pension Plan was thereby terminated, at the latest, on May 1, 1974.

10. On December 22, 1972, following the closing of the Lake Street facility, White Farm and the UAW entered into a Final Closing Agreement. That Final Closing Agreement provided, *inter alia*, for the payment by White Farm of a specified sum of money into a Supplemental Unemployment Benefits Fund; for the payment of severance pay from that Fund to employees whose employment was terminated as a result of the closing of the Lake Street facility; and for the settlement of all grievances, except those grievances which were submitted to arbitration in the proceedings referred to in paragraph 9 of this Amended Complaint. The Final Closing Agreement further provided:

"Moreover, [this Final Closing Agreement] expresses all obligations, both legal and financial, of the Company to the Union and/or any employee arising out of the closing of the Lake Street facility."

The Final Closing Agreement further provided:

"The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and an [sic] opportunity are set forth in this Agreement."

11. Defendant Malone and the Minnesota Department of Labor and Industry, asserting that the termination of the Pension Plan is subject to the Minnesota Pension Act, have declared their intention to take action to enforce the Minnesota Pension Act against Plaintiffs in respect of said termination.

Since September 1974, Defendant Malone and the Minnesota Department of Labor and Industry have required and demanded that Plaintiffs furnish documentary and other information of a kind required under the Minnesota Pension Act. Enforcement of the Minnesota Pension Act, which Plaintiffs allege is unconstitutional, will result in Malone and the Minnesota Department of Labor and Industry requiring Plaintiffs, as a result of their termination of the Pension Plan, to incur charges and liabilities under said Act in favor of White Farm's employees which will total many millions of dollars more than the charges and liabilities provided for under the Pension Plan and Pension Guarantee.

12. In January 1975, Plaintiffs and the UAW entered into a Memorandum of Agreement for the settlement of their differences concerning the termination of the Pension Plan and the termination of the litigation relating thereto. On information and belief, Plaintiffs allege that such Memorandum of Agreement was ratified and approved by a vote of the UAW membership. Because of the continuing assertion by Malone and the Minnesota Department of Labor and Industry of their intention to enforce the Minnesota Pension Act with respect to the termination of the Pension Plan, that Memorandum of Agreement was submitted to Malone for his approval. On May 12, 1975, Malone stated his disapproval of the settlement embodied in the Memorandum of Agreement, and stated his intention to take further action to enforce the Minnesota Pension Act against Plaintiffs.

13. The Minnesota Pension Act is unconstitutional as violative of the Supremacy Clause of Article VI of the United States Constitution in that it is in conflict with the provisions and policies of §§ 1, 7, 8(a)(5), 8(b)(3) and 8(d) of the National Labor Relations Act, as amended, 29 U.S.C., §§ 151, 157,

158(a)(5), 158(b)(3) and 158(d), and is preempted by such federal law. The Minnesota Pension Act unconstitutionally interferes with the right of Plaintiffs to free collective bargaining under federal law and constitutionally vitiates collective bargaining agreements entered into under the authority of federal law, by imposing upon Plaintiffs obligations which, by the express terms of such collective bargaining agreements, Plaintiffs were not required to assume.

COUNT II

14. For Count II of their Amended Complaint Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations hereinbefore set forth in paragraphs 2 through 12 of the Amended Complaint.

15. The Minnesota Pension Act is unconstitutional as violative of the provision of Article I, Section 10, Clause 1 of the United States Constitution which prohibits any state from passing any "law impairing the obligation of contracts". The Minnesota Pension Act, through the pension funding charge imposed thereunder, unconstitutionally changes and increases the obligation of Plaintiffs upon the termination of the Pension Plan in a manner directly contrary to the contractual terms of the Pension Plan and/or Pension Guarantee.

COUNT III

16. For Count III of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

17. The Minnesota Pension Act is unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Minnesota Pension Act imposes upon employers, including Plaintiffs, an arbitrary and unreasonable penalty and charge in respect of

the termination of pension plans, appropriates the property of such employers without due process of law, and is otherwise violative of due process as guaranteed under the Fourteenth Amendment to the United States Constitution.

COUNT IV

18. For Count IV of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

19. The Minnesota Pension Act is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The Minnesota Pension Act sets up wholly unreasonable classifications with respect to the coverage and reach of its provisions, imposes its penalty and charge upon only certain employers, including Plaintiffs, while insulating other employers from it, makes only certain employees, including those covered by the Pension Plan, the beneficiaries of such penalty and charge while depriving other employees of such benefits, and is otherwise violative of the right to equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

COUNT V

20. For Count V of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations hereinbefore set forth in paragraphs 2 through 12 of the Amended Complaint.

21. The Minnesota Pension Act is unconstitutional as violative of the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution. The Minnesota Pension Act imposes an unconstitutional burden on interstate commerce by prescribing a substantial penalty upon affected employers

desiring to discontinue activity within the State of Minnesota and is otherwise violative of Article I, Section 8, Clause 3 of the United States Constitution.

COUNT VI

22. For Count VI of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12, and paragraph 15, of the Amended Complaint.

23. By reason of the allegations set forth hereinbefore in the Amended Complaint, and particularly those set forth in paragraph 15 of the Amended Complaint, the Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the prohibition in Article I, Section 11 of the Minnesota Constitution against the passage by the Minnesota State legislature of any "law impairing the obligation of contracts".

COUNT VII

24. For Count VII of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12, and paragraph 17, of the Amended Complaint.

25. By reason of the allegations set forth hereinbefore in the Amended Complaint, and particularly those set forth in paragraph 17 of the Amended Complaint, the Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the provisions of Article I, Section 7 of the Minnesota Constitution guaranteeing the right of due process.

COUNT VIII

26. For Count VIII of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the

allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

27. The Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the provisions of Article III, Section 1 of the Minnesota Constitution requiring and providing for the separation of powers among the various branches of the Minnesota State government, and unconstitutionally delegates the legislative power of the legislative branch of the Minnesota State government to the executive branch of said government, and particularly the Minnesota Department of Labor and Industry and its Commissioner, defendant Malone.

WHEREFORE, Plaintiffs pray for the following relief with respect to each Count of the Amended Complaint:

1. A declaration that the Minnesota Pension Act is unconstitutional under the provisions of the United States and Minnesota Constitutions;
2. Judgment for their costs herein; and
3. Such other and further relief as shall seem just and equitable to the Court in the premises.

Dated: July 24, 1975.

JONES, DAY,

REAVIS & POGUE

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And John L. Strauch

And Leonard G. Miller

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action File No. 3-75-162

WHITE MOTOR CORPORATION, and
WHITE FARM EQUIPMENT COMPANY,
Plaintiffs,

vs.

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,
Defendant.

AMENDED ANSWER

Defendant E. I. Malone, for his answer to plaintiffs' amended complaint herein, admits, denies, and alleges as follows:

1. Admits that the amount in controversy exceeds the sum of ten thousand dollars (\$10,000), exclusive of interests and costs; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the re-

maining allegations relating either to jurisdiction or to venue; as to the remaining allegations contained in paragraph 1 of the amended complaint, alleges that they are not susceptible to responsive pleading.

2. Admits that plaintiff White Motor Corporation (hereinafter referred to as "White Motor") is a corporation which is incorporated under the laws of the State of Ohio; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the amended complaint.

3. Admits that plaintiff White Farm Equipment Company (hereinafter referred to as "White Farm") is a corporation which is incorporated under the laws of the State of Delaware; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the amended complaint.

4. Admits the allegations contained in paragraph 4 of the amended complaint.

5. Admits that plaintiff White Farm is, and at all times referred to in the amended complaint was, engaged in the manufacture and sale of farm equipment and machinery, that plaintiff White Farm maintains a facility in Hopkins, Minnesota, and that until approximately June, 1972, plaintiff White Farm operated a facility in Minneapolis, Minnesota; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the amended complaint.

6. Admits that plaintiff White Motor is, and at all times referred to in the amended complaint was, engaged in the manufacture and sale of motor trucks and motor truck parts; alleges that the defendant is without knowledge or informa-

tion sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 of the amended complaint.

7. Admits that plaintiff White Farm and the UAW, as that term is used in the amended complaint, entered into a collective bargaining agreement, effective May 1, 1971, covering the terms and conditions of employment of plaintiff White Farm employees at said plaintiff's Minneapolis and Hopkins, Minnesota, facilities, that as part of that collective bargaining agreement, plaintiff White Farm and the UAW agreed to a Pension Agreement and Plan (hereinafter referred to as the "Pension Plan") covering said plaintiff's employees, and that plaintiffs entered into a Pension Guarantee setting forth certain conditions to be met in the event there should be a closing of the plants of plaintiff White Farm in Minneapolis and Hopkins, Minnesota, and a resulting termination of the Pension Plan; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the amended complaint.

8. Admits that the State of Minnesota has enacted a law entitled the Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter referred to as the "Minnesota Pension Act"), effective April 10, 1974; to the extent that the remaining allegations contained in paragraph 8 of the amended complaint attempt to explain and characterize the Minnesota Pension Act, defendant refers the Court to the official text thereof.

9. Denies that the Pension Plan was terminated on or about June 30, 1972; alleges that White Farm's attempt to terminate the Pension Plan at that time was ineffective; admits the remaining allegations contained in paragraph 9 of the amended complaint.

10. Alleges that defendant Malone is in possession of a document, referred to in its text as a "Final Closing Agreement," purportedly entered into by White Farm and the UAW and dated December 22, 1972. Assuming said document to be a true and accurate copy of the Final Closing Agreement referred to in paragraph 10 of the amended complaint: (a) defendant alleges that the Final Closing Agreement provided for the settlement of all grievances with the exception of "those grievances concerning pension matters specified and scheduled for arbitration December 19, and 20, 1972"; (b) defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the Final Closing Agreement provided for the settlement of all grievances except "those grievances which were submitted to arbitration in the proceedings referred to in paragraph 9 of [the] Amended Complaint"; and (c) defendant admits the remaining allegation contained in paragraph 10 of the amended complaint.

11. Alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning the effect upon plaintiffs of the enforcement of the Minnesota Pension Act on behalf of either active or retired employees of White Farm; admits the remaining allegations contained in paragraph 11 of the amended complaint.

12. Admits that in January, 1975, plaintiffs and the UAW entered into a Memorandum of Agreement and that said Memorandum of Agreement was submitted to defendant for his review and approval, that defendant reviewed said Memorandum of Agreement and by letter dated May 12, 1975, notified plaintiffs of his conclusions which included, *inter alia*, a qualified disapproval of the settlement embodied in said

Memorandum of Agreement, and that defendant stated his intention to take further action to enforce the Minnesota Pension Act against plaintiffs; alleges that defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 12 of the amended complaint.

13. Denies the allegations contained in paragraphs 13, 15, 17, 19, 21, 23, 25, and 27 of the amended complaint.

14. Denies each and every other allegation, matter, fact, and thing not expressly admitted, denied, or otherwise qualified hereinabove.

SEPARATE DEFENSES

15. Alleges that no judicial interpretations have been rendered as to the Minnesota Pension Act and that this Court should abstain from the hearing of this action.

16. Alleges that the amended complaint fails to state a claim upon which relief can be granted against defendant.

WHEREFORE, defendant prays that plaintiffs take nothing by their amended complaint, that plaintiffs' amended complaint be dismissed and that defendant be awarded his costs and disbursements herein.

Dated: August 4, 1975.

WARREN SPANNAUS

Attorney General

State of Minnesota

PETER W. SIPKINS

Solicitor General

By JAMES P. GERLACH

Special Assistant

Attorney General

And RICHARD S. SLOWES

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160 State Office Building

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Telephone: (612) 296-2961

Attorneys for Defendant

(Caption)

NOTICE OF MOTION

To The Above-named Defendant and His Attorneys:

PLEASE TAKE NOTICE that on the 21st day of November, 1975 at 9:30 A.M. or as soon thereafter as counsel can be heard, at the United States Courthouse, St. Paul, Minnesota, the above-named Plaintiffs will move the Court for an Order granting summary judgment in favor of Plaintiffs, and against Defendant, on issues tendered in Count I of Plaintiffs' Amended Complaint.

In the alternative, and if the foregoing motion for summary judgment is denied, Plaintiffs will move the Court, at the time and place specified above, for an Order granting a Preliminary Injunction, upon the grounds set forth in Count I of the Amended Complaint, enjoining the Defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against Plaintiffs under the Minnesota Private Pension Benefits Protection Act, Minn. Stat. Ch. 181B, and from taking or continuing to take any other action to enforce said statute against Plaintiffs, pending a final determination of this cause by this Court.

Such motions will be made on all of the files, records and

proceedings herein, upon the Affidavit of H. Herbert Phillips,
and upon the Exhibits to the Phillips Affidavit.

September 29, 1975.

JONES, DAY, REAVIS
& POGUE

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And John L. Strauch
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(Caption)

AFFIDAVIT

State of Ohio

Cuyahoga County—ss.

H. HERBERT PHILLIPS, being first duly sworn, makes this Affidavit in support of Plaintiffs' Motion for Summary Judgment or in the alternative, for a Preliminary Injunction, and for this purpose deposes and says as follows:

1. He resides in Gates Mills, Ohio, which is a suburb of Cleveland, Ohio. He is and has been since August of 1971 Vice President, Personnel and Industrial Relations, of White Motor Corporation (White Motor) and in that capacity he has been and is in charge of collective bargaining with various unions representing employees in plants of White Motor and its subsidiaries throughout the country.

2. White Motor is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Cleveland in the State of Ohio. White Motor is and at all times referred to herein was engaged in the manufacture and sale, in interstate commerce, of trucks and motor truck parts. White Motor in 1974 had gross sales of approximately \$1,390,000,000 and approximately 17,800 full time employees. Attached hereto as Exhibit 1 is a copy of White Motor's 1974 Annual Report in the form issued to its shareholders.

3. White Farm Equipment Company (White Farm) is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

4. White Farm has a plant located at Hopkins, Minnesota which for the year 1974 had gross sales in excess of \$38,000,000 and approximately 285 employees. Until approximately June 1972 White Farm also operated a second plant in Min-

nesota on Lake Street, Minneapolis. In operating the Hopkins facility White Farm regularly obtains and receives equipment, tools and supplies from various states of the United States outside Minnesota which are shipped across state lines to Hopkins facility; and White Farm regularly uses the interstate mails, other interstate communication systems and interstate transportation systems in operating the Hopkins facility.

5. In 1962 White Motor organized a subsidiary, Minneapolis-Moline, Inc., which on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called The Minneapolis-Moline Company) which had operated the plants in Minneapolis and Hopkins prior to January 1, 1963. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm Equipment Company and operated these Motec plants and other plants.

6. Since July 6, 1955 the production, maintenance and clerical employees at the Minneapolis and Hopkins plants have been represented, for purposes of collective bargaining, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW"). From September 7, 1950 to 1955 such production, maintenance and clerical employees had been represented, for purposes of collective bargaining, by the United Electrical, Radio and Machine Workers of America.

7. After White Motor acquired Minneapolis-Moline in January 1963, pension benefits as a result of negotiations with the UAW rose at the following rates and average annual pensions increased as follows:

Year	Basic Benefit Rate and Maximum Years of Credited Service	Average Annual Pension Benefit
1963	\$2.50 x years of service (Maximum 25 years)	\$ 819
1964	\$2.80 x years of service (Maximum 25 years)	819
1965	\$2.89 x years of service (Maximum 25 years)	820
1966	\$4.25 x years of service (Maximum 25 years)	1,437
1967	\$4.25 x years of service (Maximum 30 years)	1,441
1968	\$5.25 x years of service (Maximum 30 years)	1,816
1969	\$5.25 x years of service (Maximum 30 years plus Supplemental Allowance)	1,868*
1970	\$5.50, \$5.75 and \$6.00 x years of service (Maximum 33 years plus Supplemental Allowance)	2,100*
1971	Same as 1970	2,107*
1972	\$6.50, \$6.75 and \$7.00 x years of service (Maximum 34 years plus Supplemental Allowance)	2,478

* Excluding Supplemental Allowances

8. Prior to 1968, there had been no provision in the pension plan negotiated with the UAW for these two Minnesota plants which required funding of unpaid past service liability under

the plan. In 1968, through contract negotiations with the UAW, the following section was added to the pension plan covering the Minnesota plants:

"The unfunded net deficiency as of January 1, 1963, will be amortized over a thirty (30) year period from January 1, 1963. The deficiencies resulting from benefit increases effective May 1, 1966 and May 1, 1967, will be funded uniformly over a thirty-year period from May 1, 1966 and May 1, 1967 respectively. The deficiencies resulting from benefit increases as negotiated to become effective May 1, 1968 and thereafter will be funded uniformly over a thirty (30) year period commencing with the effective date of each such benefit."

9. In the 1971-72 negotiations, culminating in the amended Pension Agreement and Plan executed in January 1972, (sometimes hereinafter called the "Plan") the Union demanded an increased level of pension benefits, and, in return for the Company's agreement to increase benefits, agreed to substitute 35-year funding of past service liability for the 30-year funding requirement contained in the 1968 Pension Plan. Deferred funding of past service liability is a common feature of pension plans. At the time the White-UAW contracts were negotiated, the thirty and thirty-five year amortization periods were consistent with industry practice. This kind of trading to obtain a quid pro quo for a new commitment is common in collective bargaining. The provision concerning funding in the amended Plan, effective as of January 1, 1971, reads as follows:

"The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973

shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively."

10. When White Motor acquired Minneapolis-Moline in 1963, the Pension Fund for the Plan had assets of less than \$500,000 and an unfunded past service liability of approximately \$6,000,000. Since that time, the Company has made regular contributions to the Fund covering normal cost and amortization of past service liability. For example, contributions in 1963 totaled \$528,000 and in 1971 totaled \$1,225,269. The total contributions made by the Company to the Pension Fund under the Plan in the period from January 1, 1963 to September 1, 1975, were in excess of \$10,200,000. From May 1, 1974 to September 1, 1975, Company contributions to the Pension Fund exceeded \$2,000,000. During the period from January 1, 1963 to September 1, 1975 the total amounts of pension benefits disbursed from the Pension Fund were approximately \$11,300,000. Of that amount, more than \$2,300,000 in pension benefits have been paid to retirees since May 1, 1974.

11. In early 1972 the Minneapolis-Moline Division of White Farm and the UAW executed collective bargaining agreements covering production and maintenance and clerical employees at the Minneapolis and Hopkins plants for the period from May 1, 1971 to May 1, 1974. Exhibit 2, attached hereto, is a copy of one such agreement. Exhibit C to each such agreement incorporated a Pension Agreement and Plan (the Plan) originally agreed to in collective bargaining agreements entered into in 1950 and amended in subsequent labor negotiations, by the following language:

"The parties hereto have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this agreement the same as if set forth at length herein."

12. Exhibit 3, attached hereto, is a copy of the Pension Agreement and Plan (the Plan) to which Exhibit "C" of the 1971-1974 collective bargaining agreement refers.

13. In language unchanged since 1950, the Plan (as amended in the 1971-72 collective bargaining negotiations with the UAW) provided for payment of pensions as follows:

"Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * *

"Section 6.17—No Other Benefits

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * *

"Section 9.04—Rights of Employees in Fund

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent."

14. The UAW recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the Pension Fund and that termination

of the Plan when the projected funding was short of accomplishment would result in loss of pensions. By reason of its awareness of this problem, the UAW insisted on and obtained, in the 1968 collective bargaining negotiations and again in the 1971 negotiations, agreements of White Motor to guarantee, "in the event there should be a closing of the Minneapolis-Moline plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan," payment of pensions at a designated level if the pension fund was insufficient to pay in full the pensions called for by the Pension Plan. The additional obligation of the Company by virtue of the Pension Guarantee is estimated at \$7,000,000. Copies of these 1968 and 1971 pension guarantees are attached hereto as Exhibits 4A and 4B.

15. During the three-year period of 1969, 1970 and 1971, the Minneapolis-Moline Division incurred losses in excess of \$21,000,000. Early in January 1972, before the collective bargaining agreement effective as of May 1, 1971 was executed by the parties, the Company advised the UAW that it intended to close the Minneapolis and Hopkins plants. Thereafter, the Company and the UAW conducted negotiations on the possibility of continued operations at one or both of these plants. As a result of those negotiations, while the feasibility of long term operation of the Hopkins plant was not established, operations at that plant have continued. Operations at the Minneapolis plant were terminated in June 1972 and the plant was closed and the building housing it demolished.

16. Section 10.02 of the Plan provided that "[t]he Company shall have the sole right at any time to terminate the entire Plan." Relying on this provision, the Company on June 30, 1972 terminated the Plan. The UAW filed grievances challenging the Company's right to terminate the Plan prior to

expiration of the collective bargaining agreements on May 1, 1974 and this question was subsequently submitted to arbitration. On or about August 30, 1973, an arbitration award was entered ruling that the Plan could not be effectively terminated prior to May 1, 1974. That award was thereafter confirmed in litigation testing the award and the Company has complied with the award. By reason of such arbitration award, the Company took action again to terminate the Plan on May 1, 1974, and the Plan terminated on May 1, 1974.

17. On December 22, 1972 the Company and the UAW entered into a final closing agreement fixing and determining the obligations of the Company arising out of the closing of the Lake Street facility. By the terms of that agreement, copy of which is attached hereto as Exhibit 5, the Company established a severance pay fund for employees of the Lake Street plant and the Union in return agreed that, with the exception of the pension grievances (which are described in paragraph 16 hereof and which have since been resolved), the Company had no other legal or financial obligation to the Union or any employee arising out of the closing of the Lake Street facility.

18. The Minnesota Pension Act became effective on April 10, 1974 after the governor of Minnesota signed the act at the site of the then demolished Lake Street plant of the Company. That Act purports to impose upon Plaintiffs liabilities and charges in respect of pension benefits which are in direct conflict with the express agreements which Plaintiffs have reached through the collective bargaining process with the union representing White Farm employees in the Minnesota plants. Thus:

(a) The Minnesota Pension Act, in conflict with the express provisions of the Pension Plan, the March 3, 1972 pension guarantee negotiated with the UAW (Exhibit 4B hereto)

and the Lake Street closing agreement of December 22, 1972, imposes on Plaintiffs a charge for full funding of all employee pensions upon termination of a Pension plan. On August 18, 1975 the Minnesota Department of Labor and Industry, in an attempt to enforce this pension funding charge, mailed to White Motor and White Farm notice of an assessment under the Minnesota Pension Act in the amount of \$19,150,053. While the accuracy of the computations of the Department of Labor and Industry is in dispute, if the Act is applied to Plaintiffs there will be imposed on Plaintiffs a liability of many millions of dollars in excess of the limits of Plaintiffs liability under the agreements negotiated with the UAW.

(b) As of January 1, 1975 there were 981 retirees under the Plan and 260 active employees at the Hopkins plant who were participants in the Plan. In addition, there were, as of that date, 233 persons with vested rights to a deferred pension under the terms of the Plan by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In direct conflict with the provisions of the Plan, the Minnesota Pension Act purports to grant vested rights to employees who at the time of the termination of their employment had 10 years of service but had not attained age 40. The effect of this provision of the Minnesota Pension Act would be to grant deferred vested pensions to 44 terminated employees of White Farm who at the time of the termination of their employment had 10 years of service but had not attained age 40 and who therefore do not qualify for deferred vested pensions under the Plan negotiated by the Company and the UAW.

(c) In January 1975 the Company and the UAW entered into an agreement establishing a new pension plan for the Hopkins plant and settling the dispute between the Company

and the UAW concerning the liability of the Company under the terminated Pension Plan. A copy of this agreement is attached hereto as Exhibit 6. That agreement, by its terms, was to become effective on May 1, 1975 but only if the Minnesota Department of Labor and Industry recognized that the settlement disposed of any claimed liability of the Company under the Minnesota Pension Act. For this reason, the settlement was submitted to the Commissioner of the Department of Labor and Industry for his review and approval. On May 12, 1975, Defendant stated his disapproval of the settlement embodied in the agreement and further stated that, unless an additional settlement proposal satisfactory to the Commissioner was immediately forthcoming, the Department of Labor and Industry would proceed to take all requisite action to effectuate its responsibilities and obligations as provided in the Minnesota Pension Act.

(d) On June 5, 1975, the Company and the UAW entered into another agreement to establish a new pension plan at the Hopkins, Minnesota plant. A copy of this agreement is attached hereto as Exhibit 7. The Minnesota Pension Act, if applied to Plaintiffs, will interfere with the performance of this agreement made through collective bargaining with the union representing production, maintenance and clerical employees of the Company at its Minnesota operations.

19. Since September of 1974, Defendant, who is charged with responsibility for the enforcement of the Minnesota Pension Act, has attempted to enforce the Act against Plaintiffs, requiring and demanding that Plaintiffs furnish documentary and other information under the Act, and taking other steps to enforce the Act against Plaintiffs in respect of the May 1, 1974 termination of the Plan.

20. More recently, and subsequent to the filing of the with-

in action, Defendant, notwithstanding the pendency of the within action to adjudicate the validity of the Minnesota Pension Act, notified Plaintiffs, in a letter of August 18, 1975, a copy of which is attached hereto as Exhibit 8, that the Department of Labor and Industry was assessing against Plaintiffs a pension funding charge under the Minnesota Pension Act of \$19,150,053, which assessment Plaintiffs were advised would be certified under said Act, unless Plaintiffs filed objection thereto and submitted to a hearing before the Department of Labor and Industry. Defendant has refused Plaintiffs' request that all administrative proceedings before the Minnesota Department of Labor and Industry covering this matter be stayed pending decision by this Court in the within action, to allow this Court to pass upon the issues raised in the within case.

21. Unless restrained by this Court, Defendant will continue to take action to enforce against Plaintiffs the Minnesota Pension Act, the validity and constitutionality of which Plaintiffs are challenging in the within action, thereby subjecting Plaintiffs to the trouble, expense, and burden of submitting to a hearing before the Minnesota Department of Labor and Industry under a statute which is invalid and unconstitutional, and to the trouble, expense and burden of such further efforts as are required of Plaintiffs to respond to efforts by Defendant to enforce the Minnesota Pension Act against Plaintiffs; and thereby subjecting Plaintiffs to other irreparable injury for which there is no adequate remedy at law.

Further, affiant sayeth not.

H. HERBERT PHILLIPS

Subscribed to and sworn before me, a Notary Public, this 23rd day of September, 1975. — Frank C. Heath, Notary Public.

[Seal]

State of Minnesota

County of Hennepin—ss.

Peter S. Hendrixson, being duly sworn, on oath says: that on the 29th day of September, 1975, he served the attached Affidavit of H. Herbert Phillips and Exhibits upon James P. Gerlach therein named, personally, at Office of the Attorney General, State Office Building, St. Paul, Minnesota in the County of Ramsey, State of Minnesota, by handing to and leaving with James P. Gerlach true and correct copy thereof.

PETER S. HENDRIXSON

Subscribed and sworn to before me this 29th day of September, 1975.—Olga T. Busceh, Notary Public, Hennepin County, Minnesota. My commission expires Sept. 15, 1978.

(Caption)

AFFIDAVIT OF JON K. MURPHY

State of Minnesota

County of Ramsey—ss.

JON K. MURPHY, being first duly sworn upon oath, deposes and says:

1. That your affiant is a Special Assistant Attorney General for the State of Minnesota and in that capacity is an attorney for the Minnesota Department of Labor and Industry.

2. That in the course of his duties affiant has participated in the Department of Labor and Industry's investigation relating to the termination by White Motor Corporation and White Farm Equipment Company (hereinafter "plaintiffs") of the May 1, 1971 Minneapolis-Moline Pension Plan (hereinafter the "1971 pension plan") and has provided legal advice pertaining thereto.

3. That on file with the Department of Labor and Industry is a letter co-signed by Robert J. Finley and H. H. Phillips,

plaintiffs' officers, dated April 16, 1974 notifying the Commissioner of the Department of Labor and Industry of plaintiffs' intention to terminate the 1971 pension plan as of May 1, 1974. A true and correct copy of said letter is attached hereto as Exhibit "A."

4. That upon receipt of this notice the Department of Labor and Industry commenced investigative proceedings pursuant to Minn. Stat., ch. 181B (1974) (the "Minnesota Pension Act"). In the initial stages of the investigation, Commissioner Malone, by letter dated September 18, 1974, requested certain information from plaintiffs. Included in that letter were requests for copies of the 1971 pension plan, lists of employees and retirees, their lengths of service, their dates of retirement, and their years of credited service under the 1971 pension plan.

5. That by letters dated October 8 and October 28, 1974, respectively, plaintiffs submitted to the Department of Labor and Industry the information requested in the Commissioner's letter described in paragraph 4 above.

6. That by letter dated December 6, 1974, the Department of Labor and Industry requested additional information including lists of all pension plan participants, their birthdates, dates of hire, years of service, benefit classifications, deductions, and the dates retiree pension benefits commenced. At a meeting between plaintiffs and the Department on December 10, 1974, most of this information was supplied by plaintiffs. By letter dated January 9, 1975, plaintiffs submitted the balance of the information to the Department, namely, a list of active employees containing, among other information, penciled-in benefit classifications for each active employee.

7. That by letter dated January 23, 1975, the Department of Labor and Industry requested additional information from

plaintiffs including schedules showing the pertinent data used in computing the benefits received or to be received by all participants of the 1971 pension plan.

8. That on January 30, 1975, representatives of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and plaintiffs met with officials of the Department of Labor and Industry and presented to the Department a Memorandum of Agreement with an effective date of May 1, 1975 which included a provision for a new pension plan for the active employees at plaintiffs' Hopkins, Minnesota, plant and a provision not to effectuate the 1973 benefit increases under the 1971 pension plan for retired employees. The agreement was conditioned upon the approval by the Department of a one million dollar settlement of the potential statutory funding charges liability for retired employees. There was no indication or representation contained therein that all of the retirees approved of this settlement proposal or, for that matter, that they approved of the non-effectuation of the 1973 benefit increases applicable to them.

9. That in order to properly assess the total dollar value of the proposed settlement, the Department of Labor and Industry requested various additional information from plaintiffs. In response thereto plaintiffs, on April 23, 1975, submitted to the Department computer print-outs which specified: each plan participant's monthly benefit level under the 1971 pension plan's 1972 benefit rates; the present value, as of April 30, 1974, of each plan participant's monthly benefit level; the monthly "guarantee level," pursuant to the plaintiffs' "Guarantee Letter" of March 3, 1972, for each plan participant; and, the present value of each plan participant's monthly "guarantee level."

10. That following an evaluation of the settlement proposal embodied in the Memorandum of Agreement and other information supplied by plaintiffs, Commissioner Malone, by letter dated May 12, 1975, declined to approve the provisions of the agreement which pertained to settlement of the retired employees' rights under the Minnesota Pension Act. A true and correct copy of this letter is attached hereto as Exhibit "B." With respect to the new pension plan for active employees, the Commissioner stated therein that it was not within the scope of his responsibility to become involved with what was essentially a matter of collective bargaining negotiations conducted on behalf of active employees.

11. That on June 5, 1975 the UAW and plaintiffs entered into a Memorandum of Agreement establishing a new pension plan for the active employees at the Hopkins, Minnesota plant. By this agreement benefit increases scheduled under the 1971 pension plan to become effective on January 1, 1973 were not effectuated as to both active and retired employees. This agreement was not submitted to the Commissioner for approval.

12. That on or about May 15, 1975, the Department of Labor and Industry obtained the actuarial services of Dr. Franklin Smith of Stennes & Associates, Bloomington, Minnesota to review materials submitted by plaintiffs and to recalculate monthly benefit increases provided for under the 1971 pension plan at the January 1, 1973 benefit levels provided therein.

13. That by letter dated August 18, 1975 Commissioner Malone notified White Motor Corporation and White Farm Equipment Company of the Department's assessment of pension funding charges. This assessment was based on schedules of monthly pension benefits, effective January 1, 1973 pur-

suant to the 1971 pension plan, for retired, active and terminated employees who had more than ten years of credited service under that plan and on the corresponding present values of these monthly benefits.

14. That prior to issuing his August 18, 1975 assessment letter, Commissioner Malone determined that in this circumstance funding charges must be assessed for the active employees, pursuant to Minn. Stat. § 181B.02, subd. 6(c) (1974), until such time that it was determined that the individual active employees were retained in employment without loss of pension credits accrued under the 1971 pension plan.

15. That the Commissioner's letter indicated that a hearing would be provided for the determination and resolution of any disputed issues concerning the assessed funding charges and that if no hearing was requested, the assessed charges would be deemed certified pursuant to Minn. Stat. § 181B.11 (1974).

16. That on October 1, 1975, the Department of Labor and Industry received from plaintiffs' counsel such a Request for Hearing. A true and correct copy of this Request for Hearing is attached hereto as Exhibit "C."

17. That on October 10, 1975, a hearing examiner was appointed to conduct hearings on the objections specified in plaintiffs' Request for Hearing and notification of the commencement of proceedings to hear and determine those objections was mailed to plaintiffs.

18. That the assessed pension funding charges contained in Commissioner Malone's letter of August 18, 1975 cannot be certified until the administrative proceedings are completed and a final decision therein has been issued.

19. That in the course of the Department of Labor and

Industry's administrative application of the Minnesota Pension Act as described above, the Department obtained a copy of a June 26, 1975 letter, attached hereto as Exhibit "D," from the UAW to plaintiffs' retirees who had been members of the UAW.

FURTHER YOUR AFFIANT SAYETH NOT.

JON K. MURPHY

Subscribed and sworn to before me this 13 day of Nov., 1975.
— Sharon J. Gregoire, Notary Public, Ramsey Co., Minn. My commission expires May 15, 1982.

EXHIBIT A

April 16, 1974

Commissioner of Labor and Industry
State of Minnesota
444 Lafayette Road
St. Paul, Minnesota 55101

Subject: Notice Pursuant to Section 8 of
Private Pension Benefits Protection Act,
Minnesota Laws 1974, Chapter 437
(H.F. No. 2764)

Dear Sir:

Section 8 of the above-referenced Act provides:

"Sec. 8. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner (of labor and industry) of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of the effective date of this act, the

notice required by this section shall be given by the employer as soon as practicable, but no later than ten days after the effective date of this act."

Section 17 of the Act provides that it shall take effect "the day following final passage."

White Farm Equipment Company, a Delaware corporation, is a wholly-owned subsidiary of White Motor Corporation, an Ohio corporation. (White Farm Equipment Company and White Motor Corporation are sometimes hereinafter collectively referred to as the "Company".) Prior to June 30, 1972, White Farm Equipment Company, through its Minneapolis-Moline Division, operated two manufacturing facilities in the Minneapolis area, to-wit, the Lake Street Plant and the Hopkins Plant. These manufacturing operations were originally acquired from Motec Industries, Inc. (formerly Minneapolis-Moline Company) in 1963. Employees at these plants were covered under a pension plan known as the "Minneapolis-Moline Pension Plan" (the "Pension Plan"), which was initially effective January 1, 1951, and which was the subject of various collective bargaining agreements between the Company and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—U.A.W. and its Local Unions Nos. 932, 1147, 107 and 337 (hereinafter collectively referred to as the "Union").

The Company notified the Union in early 1972 of its intent to terminate the Pension Plan effective June 30, 1972, and thereafter took steps necessary to implement that decision. The Union has challenged the validity of the Company's action in terminating the Pension Plan, contending that the Pension Plan could not be terminated as to Union-represented employees prior to May 1, 1974. The question of whether the

Company validly terminated the Pension Plan is presently the subject of litigation between the Company and the Union.

It is the Company's position that it had ceased to operate the Pension Plan, within the meaning of the Act, prior to the effective date of the Act and, therefore, that the provisions of the Act, and sections 3 through 6 thereof in particular, are not applicable to it. It is also the Company's position that it had ceased to operate the "place of employment," within the meaning of the Act, prior to the effective date of the Act and, therefore, that the Act is inapplicable on that ground.

Should the outcome of such litigation be unfavorable to the Company, however, the Company intends to terminate and cease to operate the Pension Plan for all purposes effective May 1, 1974, and has so notified the Union. You are hereby given notice of such intention pursuant to section 8 of the Act. It should be understood that, in giving this notice, the Company does not waive any rights or defenses which it may have.

Very truly yours,

ROBERT J. FINLEY

Vice President-Personnel
& Industrial Relations
White Farm Equipment
Company

H. H. PHILLIPS

Vice President-Personnel
& Industrial Relations
White Motor Corporation

EXHIBIT B
STATE OF MINNESOTA
 Department of Labor and Industry
 Saint Paul 55101

May 12, 1975

Mr. H. Herbert Phillips
 Vice-President, Industrial Relations
 White Motor Corporation
 100 Erieview Plaza
 Cleveland, Ohio 44144

Mr. George Kelly
 Manager, Industrial Relations
 White Motor Corporation
 130 9th Avenue South
 Hopkins, MN 55343

Mr. Leonard Page, Counsel
 United Auto Workers
 Solidarity House
 8000 E. Jefferson Ave.
 Detroit, Michigan 48214

Mr. Art Shy
 Assistant to the vice-president
 United Auto Workers
 Solidarity House
 8000 E. Jefferson Ave.
 Detroit, Michigan 48214

Gentlemen:

Your Memorandum of Agreement as presented to the Minnesota Department of Labor and Industry on January 30, 1975 for our examination, consideration and approval has been reviewed and studied pursuant to the powers vested in me by virtue of the Minnesota Private Pension Benefits Protection Act (hereinafter called the "Minnesota Pension Act").

The Department understands that this Memorandum of Agreement has been approved and ratified by White Motor Corporation (hereinafter called "White Motor") and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter called "UAW").

You have requested that the Department approve the terms of this Memorandum of Agreement which, among other things, proposes a settlement of statutory obligations for retirees. This proposed settlement, however, has been tied to and co-mingled with a separate agreement covering current employees of White Motor at the Hopkins Plant, an agreement negotiated and collectively bargained for between White Motor and UAW on behalf of its local affiliates.

It is not within the Commissioner's responsibilities, as set forth under the Minnesota Pension Act, to become involved with what is essentially collective bargaining negotiations. Related economic issues are not within the purview of the Minnesota Pension Act but rather are matters of concern for which White Motor and UAW are primarily responsible.

The full benefit rights of retirees and those terminated employees with deferred vested benefits cannot become dependent upon or infringed upon by such negotiations, nor can such negotiations unduly influence or jeopardize the statutory rights and obligations of retirees and the terminated vested employees as covered under the White Motor Pension Plan which terminated May 1, 1974 (hereinafter referred to as the "Terminated Plan").

Under paragraph 7 of the Memorandum of Agreement, you have requested that this Department acknowledge that the new pension plan as negotiated and proposed lump sum settlement to current retirees be approved by the Commissioner as satisfying the Corporation's liabilities under the Minnesota

Pension Act. The Commissioner's determination of fair and equitable treatment for retirees and those vested under the Terminated Plan and as protected by the Minnesota Pension Act must be based on a comparison of the amount of that proposed settlement versus what each retiree and vested terminated employee is entitled to under the Terminated Plan as protected by the Minnesota Pension Act.

We have reviewed the information, data and documents furnished to the Department by White Motor on April 23, 1975. Based on that information, as Commissioner of the Department of Labor and Industry I have analyzed the proposal in light of statutory obligations and hereby issue the following determination:

1) The proposed New Pension Plan to be effective May 1, 1975 (hereinafter called "New Plan") as agreed between White Motor - Hopkins and the UAW as outlined in said Memorandum of Agreement appears to satisfy White Motor's obligation under the Minnesota Pension Act with respect to present employees (including those eligible for immediate retirement) at the Hopkins Plant who were covered by the previous Terminated Plan and who will be covered under the New Plan without loss of pension credits, in accordance with said Memorandum of Agreement.

As Commissioner, in issuing my determination with respect to such current employees, I condition such determination on the fulfillment of past service credits for those employees specified in point (1) above and further that White Motor Corporation take all requisite action to qualify said New Plan under the Federal Employee Retirement Income Security Act (ERISA) and to comply with all applicable provisions of said Act so that such New Plan is properly insured by the Pension Benefit Guaranty Corporation to the maximum possible.

2) The proposal for a one million dollar lump sum settle-

ment does not provide fair and equitable treatment to current retirees having vested pension benefits under the Terminated Plan. Nor does such settlement provide adequate consideration to satisfy the statutory rights of those terminated employees with deferred pension benefits.

The information set forth in the documents furnished the Department by White Motor on April 23, 1975 indicates a \$12,325,422 present value (as calculated at the 1/1/1972 benefit level) for full retirement benefits due retired employees under the Terminated Plan. Said document indicates the present value of retirement guarantees under the Corporation's March 3, 1972 Pension Guarantee will approximate only \$5,606,261. This amount coupled with the \$1 million settlement offer, is not sufficient consideration for the State of Minnesota to relinquish its statutory jurisdiction.

The Department is willing to review and consider any additional settlement proposals which will be fair and equitable and more commensurate with the full benefit level for those whose benefits are protected by the Minnesota Pension Act. Unless such a proposal is immediately forthcoming, the Department shall proceed to take all requisite action to effectuate its responsibilities and obligations as provided by the Minnesota Pension Act.

Sincerely,
DEPARTMENT OF LABOR
AND INDUSTRY
E. I. "Bud" MALONE
Commissioner

EIM/ci

cc: Bob Killeen, Business Rep.

Gerald Johnson, Pres., Local 197, UAW

James Brown, Pres., Local 337, UAW

Al Behrendt, Pres., Retiree Association

(Caption)

AFFIDAVIT OF STANLEY A. ENEBO

STANLEY A. ENEBO, being first duly sworn on oath, deposes and says:

1. I am presently and was at all material times mentioned herein a member of the House of Representatives of the State of Minnesota.

2. I was one of the chief authors of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter the "Minnesota Pension Act").

3. I am presently and was at all material times mentioned herein Chairman of the Labor-Management Relations Committee of the Minnesota House of Representatives. That committee heard extensive testimony concerning the Minnesota Pension Act.

4. Subsequent to the passage of the Minnesota Pension Act, I prepared a letter expressing concern about the relationship between the Minnesota Pension Act and proposed federal pension reform legislation that was eventually enacted as the Employee Retirement Income Security Act of 1974. In particular, I urged that the Minnesota Pension Act not be preempted until provisions of the federal pension legislation became fully operative.

5. That letter, dated May 9, 1975, was mailed to each member of the Joint Senate-House Conference Committee considering the proposed pension legislation, as well as members of the Minnesota Delegation to Congress. Each letter was accompanied by a copy of the Minnesota Act and a summary of the main provisions of the Act. A true and correct copy of this letter is attached hereto as Exhibit A.

6. On July 9, 1974, I traveled to Washington, D.C., in order to personally present the appeal, that I had made in my letter

of May 9, to those Congressmen and congressional staff members who were involved in the Conference Committee deliberations on the federal pension legislation. I was accompanied by Minnesota State Senator John Chenoweth, the other chief author of the Minnesota Pension Act, Leroy H. Schramm, legislative analyst who assisted with the drafting of the Minnesota Pension Act, and Phyllis Spielman, then administrative assistant to the Labor-Management Relations Committee of the Minnesota House of Representatives.

7. On July 10, 1975, along with Senator Chenoweth, I met with Representatives Albert Quie and Donald Fraser and Senator Walter Mondale, all members of the Minnesota Delegation to Congress. We also met with Mr. Vance Anderson, Mr. Richard Fay, and Mr. Michael Schonenberger, members of the staffs of Representative John Dent, Senator Gaylord Nelson, and Senator Harrison Williams, respectively. Those Congressmen, as well as Representative Quie, were serving on the Conference Committee considering the proposed federal pension legislation, Senator Williams as Chairman. At those meetings we explained the Minnesota Pension Act and discussed its relationship to the proposed federal pension legislation.

FURTHER AFFIANT SAYETH NOT.

STANLEY A. ENEBO

Subscribed and sworn to me this 14th day of November, 1975.
— James P. Gerlach, Notary Public, Hennepin County, Minnesota. My commission expires July 9, 1981.

EXHIBIT A

May 9, 1974

The Honorable Ronald A. Sarasin
511 Cannon Office Building
Washington, D. C.

Dear Congressman Sarasin:

Landmark legislation in the field of private pension protection has just passed both the Minnesota House and Senate and is now on the way to the Governor's office for his signature. Final vote in the Senate occurred March 22, by a 39-15 margin and it passed the House Monday, March 25, by an overwhelming 127-3 margin.

State Senator John Chenoweth and I as chief authors of this bill have pushed vigorously for this legislation because, though we have expected Congress to be nearing enactment of such legislation since last fall, we were apprehensive that federal re-insurance, if included in the final compromise version, still might not become effective until December 13, 1975 or thereafter. This would leave a time gap in which employees could lose their pension benefits as we have sadly experienced with Minneapolis-Moline right here in Minnesota.

We, therefore, urge you to note that our legislation does include a "self-destruct" clause which goes into effect when your federal termination insurance becomes mandatory. *However, our urgent request to you is that in your conference committee, you make certain that you do not preempt us regarding the employer assets to protect pension funds until the re-insurance phase of the federal legislation is fully operative.*

Any preemption in this area until federal re-insurance is fully in force would leave a void which would lay the groundwork for further Minneapolis-Moline-White Motor Company disasters here in Minnesota.

May we have your assurance of support and cooperation in seeing to it that the pension protection safeguard we have built into the Minnesota act is not preempted at too early a date in federal legislation now before a congressional conference committee, some of whose members we understand are yet to be appointed?

Attached is a copy of the bill which was recently signed by the Governor and a brief summary of its main provision.

Sincerely,

STANLEY A. ENEBO

Chairman

Labor-Management Relations
Committee

SAE:js

Enclosure

(Caption)

AFFIDAVIT OF ALFRED H. BEHRENDT

Mr. Alfred H. Behrendt, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I currently reside at 3457 Central Avenue Northeast, Minneapolis.
2. I was a machine operator at Minneapolis Moline for approximately 30 years.
3. I started working at Minneapolis Moline May 12, 1942, and retired May 1, 1972, when I was 62 years old.
4. At the time I retired my salary was about \$10,000 a year.
5. Just before I retired I received a personnel sheet from the company which indicated that I would be receiving my full pension benefits of \$387.65 a month which included a monthly early retirement supplement of \$194.12. It was my understanding that I'd be receiving my regular pension benefit of

\$193.53 for life and my supplemental benefit until I reached age 65. A true and correct copy of this personnel sheet, dated April 18, 1972, is attached hereto as Exhibit A. I also received a letter from Mr. Tuohey, manager of employee relations for the company, confirming that I would be getting these amounts in pension benefits. A true and correct copy of the letter from Mr. Tuohey, dated May 10, 1972, is attached hereto as Exhibit B.

6. I received my full monthly pension benefits of \$387.65 for about three months after retirement at which time my supplemental benefits were discontinued and my regular benefits were reduced to \$90.83 a month. I received this reduced amount for a little over one year. I think it was in October of 1973 when I started receiving my full pension benefits again.

7. I always thought that my pension benefits were guaranteed. I participated in negotiations for the first pension plan and it was my understanding that these benefits were deferred compensation. In other words we were giving up some wages in order to receive the money later in pension benefits.

8. I relied so strongly on the promise of full pension benefits at retirement that in 1954 I gave up an opportunity to take a higher paying job with another company. I had been laid off from Minneapolis Moline for three months and during that time I accepted a temporary position with Rayette. Rayette offered me a full time job setting up and running a machine shop for them in St. Paul. I turned them down because I had 15 years seniority at White Motor and the pension promise gave me full security. Therefore, I went back to White Motor when I was recalled. I've regretted that decision ever since I've discovered that I will not get my full pension. I could have made twice as much money at Rayette than I was making with White because I would have been in charge of the machine shop.

9. At the present time I am receiving my regular pension benefit of \$193.53 a month. My supplemental benefit was discontinued when I reached 65. When my benefit is cut back to \$90.83 a month it will be difficult. My wife and I will have to make some pretty drastic changes in the way we are living. Right now she's working but she will also have to retire soon. After she retires with my pension benefit at only \$90.83 we will have to move into a low rent housing project. I understand, though, that right now there is a one year waiting period to get into most of these housing projects.

FURTHER AFFIANT SAYETH NOT.

ALFRED H. BEHRENDT

Subscribed and sworn to me this 13th day of November, 1975.

— Henry Baron, Notary Public, Hennepin County, Minnesota.

My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE AUTHORIZATION OF MONTHLY PENSION BENEFITS Pension Plan for Hourly Employees Normal, Supplemental Allowance, T & P, Special Early, Spouse Option

Name: Alfred H. Behrendt; Address: 2828 Portland Ave. So. Apt. 202; City: Mpls.; State: MN; Zip Code: 55407; Social Security No.: 718-18-6640; Pension Unit: 932; Date of Hire: 5/12/42; Date of Birth 5/10/10; Age: 62; Service Termination Date: 4/30/72; Credited Service.: 30.5; Last Day Worked: 4/28/72; Retirement Date: 4/30/72.

CLASSIFICATION OF RETIREMENT BENEFIT:

() NORMAL RETIREMENT

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- () T&P DISABILITY—(SPECIAL EARLY)
- () DEFERRED VESTED PENSION—Upon attaining age 65
- () EARLY RETIREMENT—with payment commencing () at once
() at age 65

(X) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 30.5 years credited service x \$6.75 x Applicable Reduction; Factor: none; \$205.88
2. Supplemental allowance \$400 (subject to Reduction):
 - a. Number of months service is less than 30 years:
(0) \$400 - (0 x 1.111) = \$400.00
 - b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 — x Line 2a (Sec. 6.15 (b) (2)) = \$.....
 - c. 121.33 x base hourly rate \$4.40 = \$533.85
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) \$400.00
4. Total Supplement (line 3 - line 1) = \$194.12
5. Special T&P temporary benefit (Sec. 6.02 (d) (ii) or 6.04 (c) (ii)):

— years x \$7.50 (not to exceed \$187.50) (whether or not payable) \$.....
6. Supplement (line 4 —) less Special T&P Temporary benefit (Sec. 6.15(c)) \$.....
7. Total Supplemental Allowance payable \$194.12
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
 - a. Employee is 2 years in excess of 5 years older than spouse
 - b. 2 years (line 8a) x 1/2% equals minus 1%

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- c. 95% minus 1% equals 94% adjustment factor
- 9. Monthly benefit (line 1) adjusted for option: \$205.88 x 94% (Line 8c) \$193.53
- 10. Surviving Spouse Benefit—55% of line 9 = \$106.44
- 11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) \$387.65

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 4/18/72.

Employee Signature
Alfred H. Behrendt

AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$193.53 as shown in item 9 above, and temporary benefits of \$194.12, as shown in item 7 above, to commence as of May 1, 1972.

F. M. BOAS
Pension Committee —
Employer Representative

Date 4/18/72

CLIFFORD SNEHECH
Pension Committee —
Employee Representative

Date 4/18/72

MINNEAPOLIS-MOLINE
Division of White Motor Corporation
Hopkins, Minnesota 55343

May 10, 1972

Mr. Alfred H. Behrendt
2828 Portland Avenue South
Apt. 202
Minneapolis, Minnesota 55407
Dear Mr. Behrendt:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to \$193.53, plus a supplemental allowance of \$194.12 for a total of \$387.65 effective May 1, 1972. The supplemental allowance will be terminated as of May 31, 1975 and on June 1, 1975 your regular monthly pension benefit will be \$193.53 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 214235 in the amount of \$377.65* covering the month of May, 1972. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,
J. E. TUOHEY
Manager
Employee Relations

*\$10.00 Federal Tax per your request.

JET/mj

Attachment

cc: Local 932 Pension Committee
F. M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF SPENCER WESTERBERG

Mr. Spencer Westerberg, being first duly sworn on oath, deposes and says:

1. I am now 60 years old.
2. I was an electrician for Minneapolis Moline for 35 years.
3. I began work at Minneapolis Moline on April 25, 1935, and retired on December 1, 1970, at age 56.
4. At the time I retired my salary was about \$9,000 yearly.
5. Shortly after I received my first pension check I got a letter from Mr. Tuohey, benefits manager of the company, confirming that my full pension benefits would be \$338.10 a month which included a monthly special early retirement benefit of \$150. The early retirement benefit was to be terminated on November 30, 1979, when I will be 65. A true and correct copy of the letter from Mr. Tuohey, dated February 17, 1971, is attached hereto as Exhibit A.
6. My full pension benefits were later raised to \$378.78 monthly under the foundry agreement.
7. I received my full monthly pension benefits until August of 1972 at which time my special early retirement supplement was discontinued and my regular monthly pension benefit was cut back to \$175.00. In October of 1973 I began receiving my full pension benefits again.
8. I wasn't surprised when I got the cutback because I always understood the pension was not fully funded and that our pensions were dependent upon the solvency of the company. I knew we were in trouble when White Motor came in because we had the UAW look up White Motor's record. At that time White Motor had bought approximately 20 small companies and closed down most of them and transferred the

work to other places. I figured that they intended to do the same with Minneapolis Moline.

9. Of course the rank and file were not aware of any of this. I know that the average worker at Minneapolis Moline trusted everybody and believed what the company told them. Their attitude was that the company would do the best by them. I know that most of the workers thought that the pension plan was fully funded and that their pension benefits were guaranteed. I knew what was really going on because I had held various leadership positions in the UE and for a time in the UAW. I was always particularly concerned about the pension agreements and myself and some others attempted at various times to get some straight information from the company and from the UAW about the terms of our pension agreement and plan. At one point we even called a meeting with MPIRG, the local Nader group, to enlist their aid in the effort to find out the provisions of the pension agreement and plan.

10. Right now I'm receiving my full pension benefit of \$378.78 monthly. That includes my special early retirement allowance which I should receive for another four years. However, it is my understanding that the pension fund will run out shortly and we'll all be cut back to the guarantee level. This means I will lose my supplement and my regular pension will be cut back. However, I'm not sure what it will be cut back to as there seems to be some confusion in my case. I would guess that it will be less than \$100 a month as that's what the guarantee level seems to be for everyone else who worked at the foundry.

11. Right now I have a job as a checking receiver with a small company in Bloomington. It doesn't pay very much but it's physically easy work. My job at the foundry was hard

work and I'm too old now to do that kind of work. My plan was to keep the checking receiver job till age 62 and then quit working and live off of my pension benefits and social security. Now that my pension benefits will be cut back to probably under \$100 a month I won't be able to quit working at age 62 as I had planned. I should even look for a higher paying job but I don't feel I can do physically strenuous work anymore.

FURTHER AFFIANT SAYETH NOT.

SPENCER WESTERBERG

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A

WHITE FARM EQUIPMENT

A Subsidiary of White Motor Corporation

Hopkins, Minnesota 55343

612/935-5181

February 17, 1971

Mr. Spencer B. Westerberg
6809 Newton Avenue South
Richfield, Minnesota 55423

Dear Mr. Westerberg:

We believe that you have already received your first pension check or checks, mailed to you directly from The Chase Manhattan Bank.

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to \$188.10, plus a special early allowance of \$150.00 for a total of \$338.10 effective December 1, 1970. The special early allowance will be terminated as of November 30, 1979 and on December 1, 1979 your regular monthly pension benefit will be \$188.10 plus reimbursement for Medicare.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,
J. E. TUOHEY
Benefits Manager

JET/mj

Attachment

cc: Local 932 Pension Committee

F. M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF CHARLES G. DAPPER

Mr. Charles G. Dapper, being first duly sworn on oath, deposes and says:

1. I am now 59 years old. I currently reside at 4338 Logan Avenue North, Minneapolis.
2. I was a timekeeper for Minneapolis Moline for approximately 33 years. I am presently retired.
3. I started working at Minneapolis Moline April 7, 1937, and retired February 1, 1973, when I was 56 years old.
4. At the time I retired my salary was about \$9,000 a year.
5. After I retired I got a letter from the company informing me that I would be getting my full pension benefits of \$237.62 a month which included a monthly early retirement supplement of about \$67.00. It was my understanding that I'd be getting my regular pension benefits for life and my supplemental benefits until I reached age 65. A true and correct copy of this letter dated March 6, 1973, is attached hereto as Exhibit A.
6. I received my full monthly benefit of \$237.62 until 1974 when I was assessed a penalty against future supplemental

allowances. I was informed of this penalty by letter dated March 5, 1974, from Mr. Tuohey of the company. A true and correct copy of that letter is attached hereto as Exhibit B. Apparently to be eligible for the supplemental benefits a retired employee must agree to limit his earnings after retirement and I seemed to have earned too much during 1973.

7. I am therefore currently receiving only my regular pension benefit which should be \$170.60 according to the letter I received when I retired but which is instead only \$153.54. I don't understand why my regular benefit has been reduced.

8. I understand that soon my regular pension benefit will be cut to \$69.58 a month.

9. I don't understand how the company can cut back our regular pension benefits at all. I always thought that all of my regular pension benefits were guaranteed to me for life. After thirty years of working for Minneapolis Moline I thought that I had built up security for my retirement.

10. If my pension benefits are cut back to \$69.58 a month my wife and I will probably have to go on welfare and we will lose our home. Right now our sole source of income is my pension benefits. I won't get any social security for another couple years and my wife has never worked. I have monthly mortgage payments alone of \$114.00. The utility bills for my home come to about \$50 a month and food costs us about \$80 a month. My wife has had to have twenty four cobalt treatments for cancer. These treatments were done on an outpatient basis and the company medical plan does not pay for outpatient services. Therefore, I had to pay the full \$1,000 bill for these treatments out of my own pocket. All of these expenses have almost wiped out my savings. I think that my savings will last at the most another year. Any cutback in my pension benefits will be catastrophic for my wife and I.

FURTHER AFFIANT SAYETH NOT.

CHARLES G. DAPPER

Subscribed and sworn to me this 13th day of November, 1975.
 — Henry Baron, Notary Public, Hennepin County, Minnesota.
 My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE
 AUTHORIZATION OF MONTHLY
 PENSION BENEFITS

Pension Plan for Hourly Employees
 Normal, Supplemental Allowance, T&P,
 Special Early, Spouse Option

Name: Charles G. Dapper; Address: 4338 Logan Ave.
 North; City: Minneapolis; State: MN; Zip Code: 55412;
 Social Security No.: 473-10-1484; Pension Unit: 1147; Date
 of Hire: 4-6-1937; Date of Birth: 5-12-16; Age: 56-7; Service
 Termination Date: 6-30-72; Credited Service: 34; Last Day
 Worked: 6-30-72; Retirement Date: 2-1-73.

CLASSIFICATION OF RETIREMENT BENEFIT:

- () NORMAL RETIREMENT
 () T&P DISABILITY - (SPECIAL EARLY)
 () DEFERRED VESTED PENSION - Upon
 attaining age 65
 (X) EARLY RETIREMENT - with payment
 commencing (X) at once
 () at age 65
 () SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 34 years credited service x \$7.50 x
 Applicable Reduction (\$255.00) Factor 66.9 \$170.60

2. Supplemental allowance \$400 (subject to Reduction):
 a. Number of months service is less than 30 years:
 (—) \$400 - (— x 1.111) = \$400.00
 b. Supplemental reduction for under age 60. (60 di-
 vided by number of months under age 65 594059
 x Line 2a (Sec. 6.15 (b)(2)) = \$237.62
 c. 121.33 x base hourly rate \$ — = \$ —
 3. Total benefit (if line 2c is less than line 2a or line 2b,
 use 2c) \$237.62
 4. Total Supplement (line 3 - line 1) = \$67.02
 5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or
 6.04 (c)(ii)):
 — years x \$7.50 (not to exceed \$187.50) (whether
 or not payable) \$ —
 6. Supplement (line 4 —) less Special T&P Temporary
 benefit (Sec. 6.15(c)) \$ —
 7. Total Supplemental Allowance payable \$67.02
 8. Actuarial adjustment for option, if selected, applicable
 to line 1 only (Sec. 6.13):
 a. Employee is — years in excess of 5 years older-
 younger than spouse
 b. — years (line 8a) x 1/2% equals plus-minus
 — %
 c. 95% plus-minus — % equals — % adjustment
 factor
 9. Monthly benefit (line 1) adjusted for option: \$ —
 x — % (Line 8c) \$ —
 10. Surviving Spouse Benefit - 55% of line 9 = \$ —
 11. Monthly benefit payable to age 65 (line 1 or line 9 plus
 line 7, and line 5 if payable) \$237.62

I am the "employee" hereinabove named and identified. I

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have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee Signature
Charles G. Dapper

Date 1-31-73

**AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS**

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$_____, as shown in item above, and temporary benefits of \$_____, as shown in item 7 above, to commence as of _____.

E. V. WALSKI
Pension Committee
Employee Representative

Date 3-6-73

EXHIBIT B
WHITE MATERIALS HANDLING DIVISION
White Motor Corporation
Hopkins, Minnesota 55343
Phone 612 - 935-2171

March 5, 1974

To: Charles Dapper

Section 6.15 of the Pension Plan provides that, to be eligible for Supplemental Allowance payments, a retired employee must have agreed to restrict his participation in the labor

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force within the earnings limit of the then applicable Federal Social Security Act and that if earnings after retirement in any calendar year are in excess of the amount permitted under the then current Federal Social Security Act, penalties equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding Supplemental Allowance until the full amount of such penalty is satisfied.

By our letter of February 4, 1974 we requested information regarding your earnings during the calendar year 1973 and you have responded by reporting earnings of \$5,384.53. This establishes a penalty of \$1,569.06 against future Supplemental Allowance. Unsatisfied penalties based on 1972 earnings are in the amount of \$0, making a total outstanding penalty at this time of \$1,569.06.

The enclosed pension check, therefore, includes no Supplemental Allowance and no future Supplemental Allowance will be payable until the above penalties, plus any penalties for earnings in future years have been satisfied. In addition, of course, you understand that no Supplemental Allowance is payable after age 65 in any case.

If you have any questions concerning the above, please let me know.

Sincerely,
J. E. TUOHEY
Manager
Compensation & Benefits

JEL/jss

(Caption)

AFFIDAVIT OF CLARENCE GROSE

Mr. Clarence Grose, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 2910 Russell Avenue North, Minneapolis.
2. I was a machine operator for Minneapolis Moline for 29 years. At present I am retired.
3. I started working at Minneapolis Moline November 5, 1942, and retired February 20, 1972, when I was 62 years old.
4. At the time I retired my salary was about \$10,000 per year.
5. When I retired I got a letter from the company informing me that I would be getting my full pension benefits of \$371.99 per month which included a monthly early retirement supplement of about \$190.00. It was my understanding that I would receive a total of \$371.99 a month in benefits until age 65. After age 65 I was then to get my full regular pension benefit of \$181.07 for the rest of my life. A true and correct copy of the letter which I received from the company at the time I retired is attached hereto as Exhibit A.
6. I received my full \$371.99 monthly benefits for about six months. Thereafter for a period of a little over a year I received only \$90 per month. This figure reflects a discontinuation of my supplemental benefits and a cutback of my regular pension benefits from \$187.07 to \$90.
7. The pension cutback came as a complete shock to me. I always thought that our pension agreement with the company guaranteed us our full pensions. We were to receive these pension benefits in lieu of wages. I never thought that the company could take any of our pension monies away from us.

8. Since I never thought that the pension could be reduced I didn't make any arrangements to save in other ways except that I saved a little through the credit union.

9. I am currently receiving my full regular pension of about \$180.00 a month. My supplemental pension benefits were discontinued when I reached age 65. Now I understand that my regular pension benefits will again be cut to \$90 a month. When that happens it isn't going to be easy for my family to get by.

10. I am supporting my wife and four children on just what I take home from my part-time job which comes to about \$160 monthly, my social security which comes to about \$460.00 monthly and my \$180 monthly pension benefits. I have two children who are still in high school and one in junior high. I'm trying to put my eldest child through college at St. Cloud State. It costs me about \$2,000 a year to put her through college and she works part time to help out. I am also making mortgage payments on my home, which come to about \$100 each month. When my pension gets cut back to \$90 a month it's going to make it more difficult for me to meet these obligations. We will probably have to change something but I don't know what. I would hate to ask my eldest child to give up college but I have to think of the whole family.

CLARENCE W. GROSE

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE

Authorization of Monthly Pension Benefits

Pension Plan for Hourly Employees

Normal, Supplemental Allowance, T&P,

Special Early, Spouse Option

Name: Clarence W. Grose; Address: 1616 Emerson Ave.
No.; City: Mpls.; State: Minn.; Zip Code: 55411; Social
Security No.: 473-10-1761; Date of Birth: 2/20/10; Age: 61;
Last Day Worked 1/31/72; Pension Unit: 932; Service Ter-
mination Date: 1/31/72; Retirement Date: 1/31/72; Date
of Hire: 11/5/42; Credited Service: 29.

CLASSIFICATION OF RETIREMENT BENEFIT:

- () Normal Retirement
- () T&P Disability (Special Early)
- () Deferred Vested Pension Upon attaining age 65
- () Early Retirement—with payment commencing
 - () at once
 - () at age 65

(X) Supplemental Allowance

1. Monthly benefit: 29 years credited service x \$6.75 x
Applicable Reduction Factor = \$195.75
2. Supplemental allowance \$400 (Subject to Reduction):
 - a. Number of months service is less than 30 years:
(12) \$400 - (12 x 1.111) = \$386.67
 - b. Supplemental reduction for under age 60. (60
divided by number of months under age 65 — x
Line 2a (Sec. 6.15 (b) (2)) = \$ ———
 - c. 121.33 x base hourly rate \$3.65 = \$442.85
3. Total benefit (if line 2c is less than line 2a or line 2b,
use 2c) \$386.67
4. Total Supplement (line 3 - line 1) = \$190.92

5. Special T&P temporary benefit (Sec. 6.02 (d) (ii) or
6.04 (c) (ii)): years x \$7.50 (not to exceed \$187.50)
(whether or not payable) \$
6. Supplement (line 4) less Special T&P Temporary
benefit (Sec. 6.15(c)) \$
7. Total Supplemental Allowance payable \$190.92
8. Actuarial adjustment for option, if selected, applicable
to line 1 only (Sec. 6.13):
 - a. Employee is 5 years in excess of 5 years older than
spouse
 - b. 5 years (line 8a) x 1/2% equals minus 2.5%
 - c. 95% minus 2.5% equals 92.5% adjustment factor
9. Monthly benefit (line 1) adjusted for option: \$195.75
x 92.5% (Line 8c) = \$181.07
10. Surviving Spouse Benefit—55% of line 9 = \$99.59
11. Monthly benefit payable to age 65 (line 1 or line 9 plus
line 7, and line 5 if payable) = \$371.99

I am the "employee" hereinabove named and identified. I
have read and understand the calculations above and accept
them as correct. I also agree to restrict my participation in
the work force. If my earnings exceed maximum permitted
under the Social Security Act, my benefits will cease and, in
certain instances, I could be penalized. (See Sec. 6.15(d)). I
request that my benefits be paid in accordance with my elec-
tion indicated on Form 1.

Date: 1-19-72

CLARENCE W. GROSE
Employee

**AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS**

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$181.07 as shown in item 9 above, and temporary benefits of \$190.92, as shown in item 7 above, to commence as of February 1, 1972.

HARRY WECKMAN
Pension Committee
Employee Representative

Date: 1-19-72

FRED BOOS
Pension Committee
Employer Representative

Date: 1-19-72

(Caption)

AFFIDAVIT OF ROY G. PIERCE

Mr. Roy G. Pierce, being first duly sworn on oath, deposes and says:

1. I am now 70 years old. I currently reside at 2811 East 28th Street, Minneapolis.
2. I was a security guard for Minneapolis Moline for approximately 27 years.
3. I started working at Minneapolis Moline on August 3, 1942, and retired on October 1, 1969, when I was 64 years old.
4. At the time I retired my salary was about \$7,000 a year.
5. At the time I retired I received a statement from the company informing me that I would be getting my full pension benefits of \$332.18 a month which included a monthly early retirement supplement of \$211.40. It was my understanding that I'd be getting my regular monthly pension benefit of \$120.78 for life and my supplemental benefit of \$211.40 until I reached age 65. A true and correct copy of this statement

dated September 15, 1969, is attached hereto as Exhibit A.

6. From October 1, 1969, to September 30, 1970, I received my full pension benefit of \$332.18.

7. On September 30, 1970, my supplemental benefit was discontinued as I had reached age 65.

8. A recalculation of benefits made in 1970 increased my regular pension to \$154.38. Thereafter, I received my full regular pension benefit of \$154.38 until August of 1972 at which time I was cut back to \$74.00 a month. I received only \$74.00 a month for a little over a year and then I started getting my full regular pension benefit again.

9. It took me by complete surprise when my regular pension benefit was cut back. As I understood the pension agreement and plan I was supposed to get my full regular pension for the rest of my life. I felt that the amount I was receiving should never be reduced.

10. The pension meant everything to me and I never thought anything could be done to take it away from me. It was part of my salary and I had earned it. I didn't make any other investments or arrangements for saving.

11. My current monthly pension benefit is \$154.38. It will soon be reduced, I understand, to \$74.00. I'm afraid that with my wife's and my illness we won't be able to make it if the pension is reduced to this amount. My wife has had heart trouble, arthritis and diabetes. I have heart trouble and stomach problems. I have had part of my stomach removed. The problem is that social security only pays about 80 percent of the medical bills and the medical insurance from White does not pay for outpatient care or office calls. If our health doesn't get worse we may be able to make it without selling our home. However, if we have more medical problems we may have to get some help from welfare.

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FURTHER AFFIANT SAYETH NOT.

ROY G. PIERCE

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY
PENSION BENEFITS

Pension Plan for Hourly Employees —
Supplemental Allowance

Name: Roy C. Pierce; Address: 2811 E. 28th St., Minneapolis, MN 55406; Social Security Number: 476-07-5900; Pension Unit: Non-Union; Date of Hire: 8-3-42; Date of Birth: 9-23-05; Age: 64; Service Termination Date: 10-1-69; Credited Service: 26.75; Last Day Worked: 2-28-69; Retirement Date: 10-1-69.

CLASSIFICATION OF RETIREMENT BENEFIT:

- () NORMAL RETIREMENT
() SPECIAL EARLY
() DEFERRED VESTED PENSION—Upon
attaining Age 65
() EARLY RETIREMENT—with payment
commencing () At once
() At age 65
(X) SUPPLEMENTAL ALLOWANCE

1. Years of service at termination (Art. IV) 26.75
2. Monthly benefit: 26.75 years (line 1) x \$5.25 \$140.44

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3. Supplemental allowance (\$400 minus line 2 \$140.44)
\$259.56
4. Adjustment if service is less than 30 years:
No. of months less than 30 years 39 x \$1.111 \$43.33
5. Adjusted supplemental allowance (line 3 minus line
4) \$216.23
6. Total benefit (line 2 plus line 3 or line 5 if less than 30
years service) \$356.67
7. $4\frac{1}{3}$ x Base hourly rate \$2.90 x 40 x 70% \$351.84
8. If line 6 exceeds line 7 reduce supplemental allowance
by excess \$211.40
9. Actuarial adjustment for option, if selected, applicable
to line 2 only (Sec. 6.13):
a. Employee is 8 years older-younger than spouse
b. 8 years (line 9a) x $1\frac{1}{2}\%$ equals plus-minus 4%
c. 90% minus 4% equals 86% adjustment factor
10. Monthly benefit (line 2) adjusted for option: \$140.44
line 2 x 86% (line 9c) \$120.78
11. Monthly benefit payable to age 65 (line 2 or line 10 plus
line 3 or line 5 minus line 8) \$332.18

I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under Social Security Act, my benefits will cease and in certain instances I could be penalized. (See Sec. 6.15(d).) I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee's Signature

Roy G. Pierce

Date 9-15-69

AUTHORIZATION FOR PAYMENT OF MONTHLY
PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$120.78, as shown item 9 above, and temporary benefits of \$211.40, as shown item 11 above, to commence as of 10-1-69.

E. H. SACHS

Pension Committee—

Employer Representative

Date 9-15-69

To: THE CHASE MANHATTAN BANK, Trustee

In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

S. KISBRULT

Authorized Representative—

MINNEAPOLIS-MOLINE,

INC., Pension Plan for

Hourly Employees

Date: 10/13/69

(Caption)

AFFIDAVIT OF WILLIAM E. PETERS

Mr. William E. Peters being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 405 East 104th Street, Minneapolis.

2. I was a timekeeper and production control clerk for Minneapolis Moline for 30 years. At present I am retired.

3. I started working at Minneapolis Moline February 7, 1941; and retired May 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about \$9,500 a year.

5. When I retired I got a letter from Mr. Tuohey of the company saying I would be getting my full pension benefits of \$392.11 a month which included a monthly early retirement supplement of about \$242.16. The supplement was to be terminated on November 30, 1975, and on December 1, 1975, I was to be receiving my regular monthly pension benefit of \$149.95. A true and correct copy of the letter from Mr. Tuohey is attached hereto as Exhibit A. That letter was the summation of a binding contract as far as I was concerned—a contract giving me a retirement income for life.

6. I received the full \$392.11 for a little over one year at which time my supplemental benefits were discontinued and my regular pension benefit was cut to \$78.41 a month. About one year later I started receiving my full pension benefits again.

7. I never thought that there was any point at which the company could take any of our pension benefits away from us. I've been pretty active in the union and I think I've always understood the provisions of our contracts generally and the things that we bargained for. It was always my understanding that our pension benefits were guaranteed. I just didn't ever feel the company could take any of our pension benefits away from us.

8. After I had worked for the company for about fifteen years I never even considered leaving because I didn't want to lose my pension benefits. I felt that I had been building on something my whole life and my whole life plan was built around that retirement income prospect. If we hadn't had the pension agreement I would have tried to save in another way. I relied very heavily on getting my full pension benefits for life. I didn't even consider purchasing an annuity because I

didn't think it was necessary since I had the pension. If I had known that the company could take our pension benefits away I would have pushed to get higher wages instead of the pension agreement.

9. I now receive my pension benefits of \$392.11 but my supplemental benefits will be discontinued at the end of this month. At that time I will receive my regular pension benefit of \$149.95.

10. When my pension benefits are cut again to \$78.71 a month I'll have to get some sort of work if I can. However, that will be difficult because I have a hip injury and I can't work long hours. Yet, I don't think my wife and I can get by on just our monthly social security checks and a \$78.71 monthly pension benefit. I am fortunate that my car payments and house mortgage are paid up or I would really be in trouble. But it seems to me that in your retirement years a person should be able to look forward to a trip or two and some recreation rather than having to worry about finding a part time job and making ends meet. I feel that I've earned at least that.

WILLIAM E. PETERS

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

WHITE FARM EQUIPMENT

A Subsidiary of White Motor Corporation
Hopkins, Minnesota 55343 - 612/935-5181

May 13, 1971

Mr. William E. Peters
513 E. Old Shakopee Road
Bloomington, Minnesota 55420

Dear Mr. Peters:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to \$149.95, plus a supplemental allowance of \$242.16 for a total of \$392.11 effective May 1, 1971. The supplemental allowance will be terminated as of November 30, 1975 and on December 1, 1975 your regular monthly pension benefit will be \$149.95 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 202096 in the amount of \$392.11 covering the month of May, 1971. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,

J. E. TUOHEY

Employee Relations Manager

JET/mj

Attachment

cc: Local 1147 Pension Committee

F.M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF EMANUEL WALSTROM

Mr. Emanuel Walstrom, being first duly sworn on oath, deposes and says:

1. I am now 63 years old. I presently reside at 3037 30th Avenue South, Minneapolis.

2. I worked for Minneapolis Moline for about 25 years as a machine loader leadman and in production control. I am now retired.

3. I started working at Minneapolis Moline May 18, 1945, and retired in September of 1973, when I was 61 years old.

4. At the time I retired my salary was about \$10,000 yearly.

5. When I retired I received a form from the company stating that I would be getting my full pension benefits of \$366.67 a month which included a monthly early retirement supplement of about \$186.00. I can't really understand why the company gave me the information that my full monthly benefits would be \$366.67 when they knew at the time that I would soon be cut to about \$90.00 a month. Yet, they didn't even mention the cutback in the forms which I received. A true and correct copy of the form I received from the company when I retired is attached hereto as Exhibit A.

6. I am presently receiving my full monthly pension benefit of \$366.67 which includes my early retirement supplement of \$186.00. When I am cut to the guarantee letter level my regular pension will be reduced to about \$90.00 a month. I will also lose my supplemental benefit which I would otherwise get for two more years.

7. I have been very active in the union. As the president of Local 1147 for fifteen years I often participated in contract negotiations. It was always my understanding that our pension was fully funded by the company. The first time I learned that the fund was low was at the hearing conducted by Senator Mondale in June, 1972.

8. In anticipation of the reduction of my pension benefits to about \$90 a month, my family has changed its life style quite a bit. My wife has gone back to work at age 55 which I don't feel is right. My son has had to quit college with less than one year left. I don't feel I can afford to support him through college any more. I have a 14 year old daughter to support and

educate and a home to maintain and with inflation the way it is I'm frankly very worried about the future. I think that after the cut in my pension is put into effect I will still be able to stay off of welfare as long as I don't have any large unexpected expenses such as medical bills. I have ulcers and have already had three treatments for blood clots and vein surgery.

EMANUEL WALSTROM

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

Pension Plan for Hourly Employees

Normal, Supplemental Allowance, T&P, Special Early,
Spouse Option

Name: Emanuel V. Walstrom; Address: 3037-30th Ave. S., Minneapolis, MN 55406; Social Security No.: 476-26-6418; Pension Unit: 1147; Date of Hire: 5-18-45; Date of Birth: 3-12-12; Age: 61-7; Service Termination Date: 3/16/73; Credited Service: 27.5; Last Day Worked: 3/12/73; Retirement Date: 10-1-73.

CLASSIFICATION OF RETIREMENT BENEFIT:

- () NORMAL RETIREMENT
- () T&P DISABILITY—(SPECIAL EARLY)
- () DEFERRED VESTED PENSION—Upon attaining age 65
- (X) EARLY RETIREMENT—with payment commencing (X) 10-1-73
() at age 65
- () SUPPLEMENTAL ALLOWANCE

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1. Monthly benefit: 27.5 years credited service x \$6.75 x Applicable Reduction Factor 97.2, \$180.42 (\$185.63) (\$30.00)
2. Supplemental allowance \$400 (subject to Reduction):
 - a. Number of months service is less than 30 years:
(30) \$400 - (30 x 1.111) = \$366.67
 - b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 — x Line 2a (Sec. 6.15 (b) (2)) = \$366.67
 - c. 121.33 x base hourly rate \$ — = \$ —
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) \$366.67
4. Total Supplement (line 3 - line 1) = \$186.25
5. Special T&P temporary benefit (Sec. 6.02 (d) (ii) or 6.04 (c) (ii)):
— years x \$7.50 (not to exceed \$187.50) (whether or not payable) \$ —
6. Supplement (line 4 —) less Special T&P Temporary benefit (Sec. 6.15(c)) \$ —
7. Total Supplemental Allowance payable \$186.25
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
 - a. Employee is — years in excess of 5 years older-younger than spouse
 - b. — years (line 8a) x 1/2% equals plus-minus —%
 - c. 95% plus-minus —% equals —% adjustment factor
9. Monthly benefit (line 1) adjusted for option: \$ — x —% (Line 8c) \$ —
10. Surviving Spouse Benefit—55% of line 9 = \$ —

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11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) \$366.67

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee Signature

EMANUEL V. WALSTROM

Date —

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$204.12 as shown in item — above, and temporary benefits of \$215.88, as shown in item 7 above, to commence as of 10-1-73.

CLIFFORD SNOHECH

Pension Committee—

Employee Representative

Date —

(Caption)

AFFIDAVIT OF WILLIAM PRESTON

Mr. William Preston, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3941 Pillsbury, Minneapolis.

2. I was employed by Minneapolis Moline for about 30 years as a machine operator and in the inspection department. At present I am retired and unemployed.

3. I began work at Minneapolis Moline December 2, 1940, and retired March 31, 1971, at which time I was 57 years old.

4. At the time I retired my salary was about \$8,000 a year.

5. When I retired I started receiving my full pension benefit of \$172.50 a month. A true and correct copy of the letter which the company gave me when I retired explaining that I would be receiving \$172.50 monthly benefits is attached hereto. Later that amount was raised to \$187.50 pursuant to the pension plan.

6. I received my full pension benefits for about one and a half years and then my benefits got cut back to \$90 a month. I received only \$90 a month in pension benefits for about another year. After that I again started receiving my full benefits of \$187.50.

7. I had been an officer in the union (IUE) in various capacities until 1954. Although I was never directly involved in negotiations I thought I knew the pension plan as well as anyone. I thought we were improving our station in life by sacrificing part of our paycheck—so much per hour—towards our pensions. In no way did I ever think that any of these pension benefits could be taken away from me. I thought these benefits were guaranteed for life.

8. If I had thought that I might not be getting my full pension benefits I would have taken my father's advice and taken out an annuity.

9. Now I receive my full pension benefits of \$187.50 a month. I understand that my benefits will again be cut back to \$90. I don't know what I'll do when that happens. Right now my wife and I are just barely getting by at the full benefit

level. I receive \$273.10 from social security and she receives \$183.10. My wife and I live completely on our social security and my pension benefits. We have no other income. I figure right now that it costs us about \$300 a month just for bare necessities. This doesn't include transportation, clothing and social activities. If I have to make any major repairs on my house or have any other unexpected expenses I will be in trouble. Also we have been trying to save some money but we haven't been able to save much at all. With inflation the way it is we are worried that our income, even as it is now, won't be enough to live on soon.

FURTHER AFFIANT SAYETH NOT.

WILLIAM PRESTON

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY
DISABILITY PENSION BENEFITS
Pension Plan for Hourly Employees (Form 3)

Name: William B. Preston; Address: 3941 Pillsbury Ave. So., Mpls., Minn. 55409; Social Security Number: 475-03-1720; Pension Unit: 932; Date of Hire: 12-2-40; Date of Birth: 8-22-13; Age: 57; Service Termination Date: 3-31-71; Last Day Worked: 3-20-70; Retirement Date: 4-1-71.
TOTAL AND PERMANENT DISABILITY PENSION BENEFIT:

1. Date of Proof of Disability received by the Pension Committee 3-20-70.

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2. First day of total and permanent disability 3-21-70.
3. First day of total and permanent disability benefits 3-21-71.
4. Years of credited service 30 (Sec. 4.01).
5. Montly retirement benefit *prior* to Age 65: and/or while ineligible for unreduced Social Security benefits.
 - a. Gross monthly retirement benefit: 30 yrs. (line 4) x \$5.75 = \$172.50
 - b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) _____ \$_____
 - c. Additional temporary benefits: (Sec. 6.04(c)(ii)) _____ yrs. (line 4) x \$_____ = \$_____
 - d. Monthly disability retirement benefit from Plan \$_____
6. Monthly retirement benefit *after* Age 65: or when eligible for unreduced Social Security benefits.
 - a. Gross monthly retirement benefit: _____ yrs. (line 4) x \$_____ = \$_____
 - b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) _____ \$_____
 - c. Monthly disability retirement benefit from Plan \$172.50

I hereby certify that the data used in the calculation of the MONTHLY DISABILITY RETIREMENT BENEFITS are as shown on our records and that the calculation of such benefit as shown in line 5 and d and/or line 6c is correct.

Date _____

Personnel Department—
Minneapolis-Moline, Inc.

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I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct.

Employee's Signature
WILLIAM B. PRESTON

Date 3-10-71

AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$172.50, as shown in line 5a and/or 6c above, and temporary benefits of \$none as shown in item 5c above, to commence as of April 1, 1971. The monthly pension above shown shall be payable during lifetime until Age 65 at which age a re-determination shall be made in accordance with provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees, Sec. 6.04.

FRED BOOS
Pension Committee—
Employer Representative
CLIFFORD SNOHECH
Pension Committee—
Employee Representative

Date 3-10-71

To: CHASE MANHATTAN BANK, Trustee

In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

Authorized Representative—
MINNEAPOLIS-MOLINE,
INC., Pension Plan for Hour-
ly Employees

(Caption)

AFFIDAVIT OF MILDRED MacDONALD

Mrs. Mildred MacDonald, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3832 29th Avenue South, Minneapolis.

2. My husband, George MacDonald, worked for Minneapolis Moline in the parts department and on the assembly line for about 42 years. He retired in May of 1972 at age 60.

3. My husband died on November 7, 1972.

4. At the time he retired his salary was about \$8,000 a year.

5. When my husband retired he began receiving his full monthly pension benefits of about \$185.00. In the summer of 1972 these benefits were drastically cut. I can't remember the exact figure his benefits were cut to but I think it was around \$75 or \$80.

6. When my husband died I was supposed to receive \$103.37 a month in widow's benefits. The reason I was to receive these benefits was because my husband had elected to have his monthly pension benefit reduced so that I could receive some benefits after he died. However, after my husband died I only received \$43.00 a month till the next spring or summer.

7. My husband and I had never thought that we would not receive his full pension benefits and my full widow's benefits. We really relied on these pension benefits. Had we known that these pension benefits were not ours for sure we would certainly have made other investments and saved in other ways. Shortly before my husband's benefits were cut we took out a mortgage on our house and used part of that loan to purchase a small dry cleaning business. We thought it would help me get by if something happened to him.

8. I wish now that my husband had taken my advice and switched to a civil service job because there is more security in those jobs. However, in later years he wouldn't consider leaving Minneapolis Moline because of his seniority and pension benefits.

9. Now I receive \$103.37 monthly as my widow's pension benefit. If I am cut back to \$40 per month it will create a real financial crisis for me. I have a twenty-six year old son whom I must support because he is emotionally disturbed. I get no help from the state to support him and I hope I can continue to support my son and myself in the future. However, my dry cleaning business is not doing well. Some months last year, due to various expenses, I didn't take anything home from the business. The most I took home in any month was \$200. I do get my social security of \$222.10 a month but I also have about \$100 a month monthly mortgage payments to make. I'm just not sure how I'll get by when my widow's pension benefits are cut.

FURTHER AFFIANT SAYETH NOT.

MILDRED MacDONALD

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

(Caption)

AFFIDAVIT OF DONALD W. DUFFY

Mr. Donald W. Duffy, being first duly sworn on oath, deposes and says:

1. I am now 64 years old. I presently reside at 3551 Irving Avenue, North, Minneapolis.

2. I was a machine operator and gear cutter for Minneapolis Moline for 36 years but I'm presently retired and unemployed.

3. I started working at Minneapolis Moline March 8, 1935, and retired October 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about \$10,000.

5. When I retired I got a sheet from the company saying I would be getting my full pension benefits of \$400 a month which included a monthly early retirement supplement of about \$200. I also talked with a Mr. Voss or Foss from the company who explained how my pension benefits were calculated. He also told me I would be getting total \$400 monthly benefits. After that I thought I'd be getting these pension benefits for life except for supplemental benefits which I would get only until I reached 65 in 1976. A true and correct copy of the sheet which I received from the company when I retired is attached hereto as Exhibit A.

6. I did get the full \$400 monthly benefit for almost a year at which time the supplemental benefits were discontinued and my regular pension benefit got cut back to \$83 a month. I received only \$83 a month in pension benefits for about a year. During that time I used up about half of my savings in order to get by.

7. I always thought that these pension benefits were going to be mine no matter what. I never thought that the company might take these benefits away from me.

8. Had I known that these benefits were not guaranteed I might have quit the company and gone to work somewhere else. During the last three years of my employment there, I was ready to quit any time because working conditions were rotten. However, I thought of my pension and decided to stick by my job there. I had too much seniority built up to give it up at that time of my life.

9. In 1969 or 1970 I had a chance to go to a gear shop in St. Cloud. That shop contacted several fellows at the plant

through the recommendation of another gear man, Lane, I believe. I turned them down because of the pension benefits I anticipated receiving. I don't remember the name of the shop but I understand that they are now cutting gears for White Motor Company.

10. I now receive \$400 a month pension benefits from the company. My supplemental benefits of about \$200 will be discontinued in due course. Now I understand that my regular pension benefits of about \$200 will again soon be cut to \$83 a month. When my pension benefits get cut to \$83 a month, I will have to sell my lake cabin. Selling my lake cabin would be a real tragedy for me because it is so much a part of my life. It's really like a second home. Fifteen other men who I have worked with all my life also own cabins in the area. But even more important to me, my boys and my grandchildren love the place the spend a lot of time there. If I had to sell the cabin I would not get to see my family that often. Really our family life revolves around that cabin. If I sold the cabin, my wife and I could probably get by if she continued to work. Right now she works full time. She takes home about \$400 a month and I get \$244 a month from social security. I think if my pension benefits were reduced to \$83 a month, we could get by if I sold the cabin and if my wife can continue to work full time.

FURTHER AFFIANT SAYETH NOT.

Dated: 11-7-75.

DONALD W. DUFFY

Subscribed and sworn to me this 7th day of Nov. 1975. — R. J. Knutson, Notary Public.

EXHIBIT A

MINNEAPOLIS-MOLINE

APPLICATION FOR A PENSION BENEFIT
AND ELECTION OF MONTHLY PENSION OPTION
Pension Plan for Hourly Employees (Form 1)

Employee's Name: Donald W. Duffy; Clock No.: 1012;
Social Security No.: 468-07-8420; Pension Unit: 932.

A. I hereby make application for a pension benefit under the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees as follows:

1. () NORMAL RETIREMENT at or after age 65.
2. (X) EARLY RETIREMENT between age 60 and 65; payments to commence, NOW (X) at age 65 ().
3. () EARLY RETIREMENT between age 55 and 60; payments to commence, NOW () at age 65 ().
4. () TOTAL AND PERMANENT DISABILITY RETIREMENT. Total and permanent disability began _____.
5. () DEFERRED VESTED PENSION upon attaining age 65.

B. It is my intention to retire on 10-1-71.

I wish to have my monthly retirement benefit payments commence in accordance with the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees.

Participant's Signature
DONALD W. DUFFY

Date 9-30-71.

C. ELECTION OF MONTHLY PENSION OPTION. (Check appropriate box below.)

In accordance with and subject to the provisions of the Minneapolis-Moline Pension Plan, I hereby elect to have the pension to which I am entitled (Line 7 or Line 10, Form 2) paid in the form indicated below:

(X) SURVIVING SPOUSE OPTION.

I hereby designate as my Contingent Annuitant (Name) Marcella J. Duffy (Relationship) wife, who I certify was born on (Date) 4-24-17 and was married to me on (Date) 4-26-41.

A Surviving Spouse Benefit equal to 55% of my monthly benefit will be continued to my Contingent Annuitant after my death.

It is understood that this election, if approved, will be automatically cancelled if I die prior to the due date for my first pension payment, in which event no payments whatsoever will be made to the Contingent Annuitant, or if the Contingent Annuitant dies prior to said due date, in which event payments will be made to me as though I had not elected this option.

() LIFE ONLY BENEFITS.

I choose not to elect the foregoing option. It is understood that my pension payments under the Pension Plan will be paid during my lifetime in a level amount, subject to the deductions set forth in the plan, and that no payments will be made after my death.

IT IS UNDERSTOOD THAT THE CHOICE I HAVE MADE BY CHECKING ONE OF THE ABOVE BOXES IS IRREVOCABLE AND CANNOT BE RESCINDED OR CHANGED BY ME.

DONALD W. DUFFY
Participant's Signature

UNITED STATES DISTRICT COURT

(Caption)

MEMORANDUM AND ORDER

CURTIS L. ROY, Esq., and PETER HENDRIXSON, Esq., Dorsey, Marquart, Windhorst, West & Halladay, Minneapolis, Minnesota, together with FRANK C. HEATH, Esq., Jones, Day, Reavis & Pogue, Cleveland, Ohio, appeared for the plaintiffs.

Warren Spannaus, Attorney General, State of Minnesota, by JAMES P. GERLACH, Esq., RICHARD S. SLOWES, Esq., and KATHRYN RUSH, Esq., Special Assistant Attorneys General appeared for the defendant.

This matter is presently before the court on motions by all parties. Plaintiffs are seeking a summary judgment, or in the alternative, a preliminary injunction on Count I of the Amended Complaint; defendant is requesting the court to abstain. Plaintiffs have brought this action challenging the constitutionality of the Minnesota Private Pension Protection Act, Minn. Stat. § 181B.01 *et seq.* (1974) (hereinafter the "Minnesota Pension Act").

Plaintiff White Motor Corporation (hereinafter "White Motor") is an Ohio corporation with its principal place of business in Cleveland, Ohio. White Farm Equipment Company (hereinafter "White Farm") is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

The defendant, E. I. Malone, is the Commissioner of Labor and Industry for the State of Minnesota and is obligated to perform certain duties under the Minnesota Pension Act.

The facts giving rise to the dispute between the parties are lengthy. In 1962, White Motor organized a subsidiary, Min-

neapolis-Moline, Inc. Minneapolis-Moline, Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972.

In 1950, a pension plan was established for the employees of the predecessor of White Farm. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance employees and clerical employees at the Lake Street and Hopkins plants.¹ Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

¹ Prior to 1955, the employees were represented by Local 1146 of the United Electrical, Radio and Machine Workers of America.

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973 respectively.

Deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met by continued business operations and continued contributions by the employer to the pension fund. If the plan is terminated, the pension fund will not be increased and as a result some past service liability will remain unfunded.

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

• • • • •

Section 6.17—No Other Benefits

No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

• • • • •

Section 9.04—Rights of Employees in the Fund

No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or

otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately \$7,000,000.

After suffering substantial losses from 1969 to 1971 at its Minneapolis-Moline Division, White Motor in January, 1972 informed the UAW that it intended to close its Minneapolis-Moline plants. Operations at the Lake Street plant were terminated in June 1972 and the plant was closed and the building subsequently razed. Operations at the Hopkins plant have continued.

Section 10.02 of the pension plan provided that "[t]he Company shall have the sole right at any time to terminate the entire Plan." Relying on this language, White Motor attempted to terminate the pension plan on June 30, 1972. The UAW challenged White Motor's attempt to terminate the plan prior to expiration of the collective bargaining agreement. An arbitrator's award and subsequent litigation upholding that award determined that the plan could not be terminated until the expiration of the collective bargaining agreement on May 1, 1974.² The pension plan was thereafter terminated on May 1, 1974.

² See, *International Union Etc. v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974).

At the time the Lake Street plant was closed, the pension fund was only partially funded and there was a net deficiency in the fund of approximately \$14,000,000.

As of January 1, 1975 there were 981 retirees under the pension plan and 233 persons eligible for deferred pensions by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In addition there were 44 terminated employees who at the time of the termination of their employment had 10 years of service but had not attained the age of 40. Ten years of continuous service is the minimum number of years an employee must have worked for White Motor before becoming eligible for benefits under the plan, but to be so eligible, he must also have attained the age of 40. As of January 1, 1975 there were 260 active employees at the Hopkins plant who were participants in the plan.

On April 10, 1974, the Minnesota Pension Act, Minn. Stat. § 181B.01 *et seq.*, was enacted into law. The title of the Act describes it as

"[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Minn. Stat. §§ 181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have

received had the particular plan not been terminated or had the place of business not been closed.

Minn. Stat. §§ 181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under § 181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the provisions of the Pension Act, Malone notified White Motor and White Farm on August 18, 1975 that they owed a pension funding charge of \$19,150,053.

Plaintiffs contend that the Pension Act conflicts with the pension plan in the following manner: (1) the Act provides employees vested rights to pension benefits which would not be available under the plan. Compare §§ 181B.03-.06 with Sections 6.17 and 9.04 of the plan, (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general funds of the employer. §§ 181B.03-.06. The pension plan provides that benefits shall be paid only out of the pension fund and that the Company shall not be liable to any extent. Sections 6.09 and 9.04 of the plan; and (3) the Act completely changes the consequences of terminating the pension plan.

PROCEDURAL POSTURE

Plaintiffs filed their original complaint in May, 1975 alleging that the Minnesota Pension Act is unconstitutional on several grounds. In July, 1975 plaintiffs amended their complaint to include an allegation that the Act is in conflict with the provisions and policies of the NLRA and thus is preempted under the Supremacy clause of the United States Constitution.³

³ Art. VI, cl. 2.

Plaintiffs have moved for a partial summary judgment solely on their preemption claim. Fed.R.Civ.P. 56. In the alternative, plaintiffs seek a preliminary injunction, also based only on the preemption claim, to enjoin the enforcement of the Minnesota Pension Act by the defendant. Defendant has moved the court to abstain from hearing this action pending state construction of the Minnesota Pension Act.

The plaintiffs' amended complaint seeks only a declaratory judgment that the Pension Act is invalid. The motion for partial summary judgment for declaratory relief is properly heard by a single judge. Plaintiffs' alternative request for a preliminary injunction is carefully based only on preemption. A request for an injunction based on a preemption challenge to a state statute does not require the convening of a three-judge court. *Swift & Co. v. Wickham*, 382 U.S. 111 (1965). Furthermore, where a statute is challenged both on preemption grounds and other constitutional grounds, the court, sitting as a single judge, should decide the preemption issue first. *Hagans v. Lavine*, 415 U.S. 528 (1974).

The scope and the basis of relief sought is significant for it differs with the relief sought in *Fleck, et al. v. Spannaus, et al.*, File No. 3-75 Civ. 178, also issued today. The court expended considerable effort in attempting to place the two cases in an identical procedural posture and reluctantly concludes that its attempt to produce a "Brobdingnagian" result was unsuccessful.⁴

⁴ Professor Chafee once wrote, "The King of Brobdingnag gave it for his opinion that, 'whoever could make two ears of corn, or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country than the whole race of politicians put together.' In matters of justice, however, the benefactor is he who makes one lawsuit grow where two grew before." *Bills of Peace with Multiple Parties*, 45 Harv.L.Rev. 1297 (1932).

Fed.R.Civ.P. 56(c) provides that summary judgment is proper where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Minnesota Bearing Co. v. White Motor Corp., 470 F.2d 1323 (8th Cir. 1973), sets forth the standard for the issuance of a preliminary injunction:

In order to justify the issuance of a preliminary injunction by the trial court, the movant has the burden of showing: (1) substantial probability of success at trial by the moving party, and (2) the irreparable injury to the moving party absent such issuance. Other factors which may be considered in the decision to grant or to deny the request are the absence of substantial harm to other interested parties, and the absence of harm to the public interest.

470 F.2d at 1326.

The court will examine defendant's motion to abstain before considering plaintiffs' alternative motions of summary judgment or preliminary injunction.

ABSTENTION

Defendant has moved for abstention on the grounds that state administrative or court proceedings may eliminate or substantially modify plaintiffs' federal challenge to the Act.

Abstention cases have generally "... dealt with unresolved questions of state law which only a state tribunal could authoritatively construe." *Wisconsin v. Constantineau*, 400 U.S. 433, 438 (1971). Abstention is justified where the state statute is susceptible to a clarifying construction that would alter or eliminate the constitutional question. *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 510 (1972); *Zwickler v. Koota*, 389 U.S. 241, 249 (1967). It is not proper to abstain

"... simply to give state courts the first opportunity to vindicate the federal claim." *Zwickler v. Koota*, *supra* at 251.

Defendant has failed to indicate to the court any statutory provisions involved in this case which might be construed by a state court so as to modify the federal question being considered. Nor has defendant contended that the state administrative proceeding might relieve plaintiffs of any liability. The present controversy requires the court to construe a federal law, a task which is best performed by a federal court. *See Chemical Specialties Manufacturers Ass'n v. Lowery*, 452 F.2d 431, 433 (2d Cir. 1971).

Accordingly, defendant's motion to abstain will be denied.

SUMMARY JUDGMENT

Plaintiffs contend that they are entitled to summary judgment on the grounds that the Minnesota Pension Act is in conflict with, and preempted by, the provisions and policies of the National Labor Relations Act, as amended, 29 U.S.C. §§ 151, 157, 158(a)(5), 158(b)(3), and 158(d). Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, (hereinafter NLRA) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a)(5), 8(b)(3) and 8(d) of the NLRA require employers and labor organizations to bargain in good faith with respect to "wages, hours and other terms and conditions of employment. . . ."

It has been established that pension plans fall within the category of "wages and other terms and conditions of employment", and are therefore mandatory subjects of bargaining under the NLRA. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied* 336 U.S. 960 (1949). Plaintiffs assert that since they were required to bargain in good faith over pension benefits and having reached an agreement on a pen-

sion plan, a state statute which conflicts with the terms of that agreement infringes on the national policy of collective bargaining and thus has been preempted under the Supremacy clause by the statutes embodying federal labor policy.

The concept of preemption was explained in *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274, 285-286 (1971), where the Court stated:

The constitutional principles of preemption, in whatever field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.

The method for determining whether a conflict exists has been addressed by the Supreme Court:

Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict.

Perez v. Campbell, 402 U.S. 637, 644 (1971).

Construction of the Statutes

The Minnesota Pension Act has not been construed by any judicial body—state or federal. However an analysis of the Act indicates the protection it seeks to provide.

The title of the Act describes it as

"[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Through the imposition of a "pension funding charge", the act protects employees with ten or more years of credited

service under a pension plan from forfeiture of those pension benefits. Minn. Stat. §§ 181B.03-06. The protection is provided by using the pension funding charge to purchase an annuity that will provide the protected employee with monthly pension benefits after his normal retirement age. Minn. Stat. § 181B.12. The pension funding charge is assessed directly against the employer when it ceases to operate a place of employment in Minnesota leaving a substantial number of employees unemployed, or if it terminates a pension plan. Minn. Stat. §§ 181B.03-.06.

The NLRA has been authoritatively construed by the Supreme Court on numerous occasions. It has been described as ". . . a comprehensive code passed by Congress to regulate labor relations in activities affecting interstate and foreign commerce." *Nash v. Florida Industrial Commission*, 389 U.S. 235, 238 (1967).

The NLRA is

" . . . designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. The Act does not compel any agreement whatsoever between employees and employers. Nor does the act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement." [footnotes omitted]

Labor Board v. American National Insurance Co., 343 U.S. 395, 401-402 (1952); *See Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937).

Question of Conflict

With the construction of the statutes considered, the question presented is whether state regulation of pensions is in conflict with and thus preempted by the NLRA and its policies.

1. Labor Law Preemption

The well developed law surrounding labor preemption has focused on primarily two areas: (1) regulation of labor-management relations and labor disputes, and (2) regulation of conduct of a union towards an individual member. *See Cox, Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337 (1972). As a consequence, the "test" for determining whether State decisional or statutory law is preempted is a result of litigation in those areas. The principles established in those cases are helpful in analyzing the claims of the plaintiffs herein, but nonetheless the court is still left with a case of first impression concerning the permissible extent of state regulation of employee pension funds.

The established standard for labor law preemption was enunciated in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). In *Garmon* the Supreme Court overturned a state court's award of damages for economic injuries resulting from peaceful picketing. The status of the picketing was uncertain under the NLRA, since the Labor Board had not ruled on the question. The court explained its restriction on state court jurisdiction saying:

When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . .

At times it has not been clear whether the particular activity regulated by the States was governed by § 7 or

§ 8 or was, perhaps, outside both these sections. . . . When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

The *Garmon* "arguably protected or prohibited" test was reaffirmed in *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274 (1971), in the context of an employee-union controversy.

Section 7 proscribes the protected rights of employees. There are no employees party to the present action contending that their rights have been interfered with.

Section 8 of the NLRA requires employers and labor organizations to bargain in good faith over "wages, hours and other terms and conditions of employment. . .", which would include pensions.

The employers duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provisions be included in a pension plan.

The NLRA does not regulate the substantive terms of a collective bargaining agreement. *Labor Board v. American National Insurance Co.*, *supra* at 402.

The danger addressed in *Garmon* is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not

" . . . regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and require-

ments imposed by state law. . . ." *Garmon, supra*, at 244.

2. Congressional Intent

Although the Pension Act does not seem on its face to conflict with the regulatory scheme of the NLRA, it is nonetheless the court's function

" . . . to determine whether [the] challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). [further citations omitted]

Perez v. Campbell, supra at 649.

Plaintiffs contend that the purpose and objective of Congress which is being frustrated by the Pension Act is the collective bargaining process. This frustration allegedly occurs because labor and management agreed to a provision in a collective bargaining agreement covering the termination of the pension plan and now the State of Minnesota seeks to apply a law which would effectively alter the agreed-to provision.

A court cannot " . . . declare preempted all local regulation that touches and concerns in any way the complex interrelationships between employers, employees, and unions; obviously much of this is left to the States." *Lockridge, supra* at 289. It is recognized that Congress developed its special framework of labor laws within a larger context of state laws which provide for rights of property, public order and the promotion of public health and welfare. *Cox, Labor Law Preemption Revisited, supra*, at 1355.

In examining Congressional intent it should be recognized that "the principle of pre-emption that informs our general national labor law was born of [the Supreme] Court's efforts, without the aid of explicit congressional guidance. . . ." *Lockridge, supra* at 286. Although Congress has not given explicit

guidance in the NLRA of the extent that it desired to preempt state laws of the type here being challenged, it has given indications in other laws that legislation and regulation by the States of various subject matter would be permissible.

For example, Congress indicated in the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* that States could establish a higher minimum wage than was required by federal law.⁵ Such state requirements can be imposed even though wages are a mandatory subject of collective bargaining.

In a similar vein, the Supreme Court looked to Congress' affirmative indications in another enactment when it held that an employee could bring an action in state court against his employer for breach of a collective bargaining agreement even though the employer's action was an unfair labor practice under Section 8 of the NLRA and thus within the jurisdiction of the National Labor Relations Board. *Smith v. Evening News Association*, 371 U.S. 195 (1962).

Relevant to the state statute being challenged by the plaintiffs was the expression of Congressional intent for state regulation of pensions when Congress enacted the Welfare and Pension Plans Disclosure Act (hereinafter the "Pension Dis-

⁵ Section 18(a) of that Act, 29 U.S.C. § 218(a) provides as follows:

No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with a Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

closure Act"), 29 U.S.C. § 301 *et seq.*⁶ Congress expressly provided that states should remain free to become involved in the regulation of pension plans when it stated:

The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. § 309(b).

The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:

. . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors to leave regulatory responsibility to the States.

* * *

. . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, to leave to the States the detailed regulations relating to insurance, trusts, and other phases of

⁶ The Pension Disclosure Act was the controlling pension statute in effect when the Minnesota Pension Act was enacted. Subsequently, the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law, was enacted by Congress. 29 U.S.C. § 1001 *et seq.* ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. § 1031, and replaced it with new reporting and disclosure provisions. 29 U.S.C. §§ 1021-1031.

ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. § 1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions or legislative history. Compare with *Fleck, et al v. Spannus, et al.*, File No. 3-75 Civ. 178, also issued today.

their operations, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. [emphasis added]

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154.

Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. See, e.g., S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4143-4144; H. Rep. No. 2283, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining.

3. Collective Bargaining Agreement

Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the collective bargaining agreement.

In support of their position, plaintiffs place heavy reliance on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959).

In *Oliver* a group of local labor unions had entered into a collective bargaining agreement with a group of interstate motor carriers providing the wage scale for truck drivers and the minimum rental for drivers who used their own vehicles. A state court enjoined certain carriers and a local union from carrying out the minimum rental provision on the grounds that it violated state anti-trust law. However, the Supreme Court held that state antitrust law could not be applied to prohibit the parties from carrying out the terms of its collective bargaining agreement. The Court stated:

To allow the application of the Ohio antitrust law here

would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here. 358 U.S. at 295-296.

State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. See, e.g. *Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 (1975); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective action by employees would produce a direct conflict with the national labor policy. The Court has stated that:

[p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act.

Plaintiffs have also relied on the following cases which merit comment: *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956); *California v. Taylor*, 353 U.S. 553 (1957); *United Airlines, Inc. v. Industrial Welfare Comm'n*, 211 C.A. 2d 729, 28 Cal. Rptr. 238 (1963). Although it may not be a significant distinction, all of the above cases were decided under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* An important distinction, however, is that none of the cases dealt with a state's efforts to regulate a subject matter which Congress had specifically indicated they could regulate. The court also finds persuasive the distinction of the cases on their facts and the quality of state regulation involved as argued by the defendant in its supporting memoranda.

Based upon the foregoing, the court is not persuaded that the NLRA and its policies preempt the state regulation of pensions embodied in the Minnesota Pension Act. The court is not ruling on the validity of the Pension Act vis-a-vis any other law or constitutional provision since none has been presented to it. Plaintiffs' motion for summary judgment will be denied.

PRELIMINARY INJUNCTION

In the alternative, plaintiffs have moved for a preliminary injunction against the defendant. Plaintiffs have so moved on the same grounds as their request for summary judgment—preemption. Based on the analysis of the law recited above in denying plaintiffs' motion for summary judgment, the court concludes that plaintiffs have not shown a substantial probability of success at trial and thus plaintiffs' request for a preliminary injunction will also be denied. The foregoing recitation of facts and statement of law shall constitute the court's Findings of Fact and Conclusions of Law in accordance with Fed. R. Civ. P. 52(a).

Upon the foregoing,

IT IS ORDERED That defendant's motion to abstain be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting summary judgment in favor of plaintiffs, and against defendant, on issues tendered in Count I of plaintiffs' Amended Complaint be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting a preliminary injunction, upon the grounds set forth in Count I of the Amended Complaint, enjoining the defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against plaintiffs under the Minnesota Private Pension Act, Minn. Stat. Ch. 181B, and from taking or continuing to take any other action to enforce said statute against plaintiffs, pending a final determination of this cause by this court, be, and the same hereby is in all respects denied.

Dated: March 18, 1976.

DONALD D. ALSOP

United States District Judge

(Caption)

NOTICE OF APPEAL

Notice is hereby given that White Motor Corporation and White Farm Equipment Company, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order entered in this action on the 18th day of March, 1976, in which the District Court, *inter*

alia, overruled the plaintiffs' motion for a preliminary injunction.

Dated: March 23, 1976.

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UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

No. 76-1266

WHITE MOTOR CORPORATION and
 WHITE FARM EQUIPMENT COMPANY,

Appellants,

vs.

E. I. MALONE, Commissioner of Labor
 and Industry for the State of Minnesota,

Appellee.

Appeal from the United States District Court for the
 District of Minnesota.

Submitted: September 15, 1976

Filed: December 2, 1976

Before BRIGHT and WEBSTER, Circuit Judges, and
 TALBOT SMITH, Senior District Judge.*
 BRIGHT, Circuit Judge.

The question presented by this case is whether federal labor policy preempts the legislative power of the State of Minnesota to impose upon the White Motor Corporation¹ (White Motor) the obligation to fully fund its employee pension plan upon the closing of its factory and terminating its employees, notwithstanding an agreement to the contrary contained in the collective bargaining contract between White Motor and

* TALBOT SMITH, Senior District Judge, Eastern District of Michigan, sitting by designation.

¹ The district court described the organizational history of appellant White Motor, as follows:

In 1962, White Motor organized a subsidiary, Minneapolis-Mo-

the employees' unions. The district court answered this preemption question in the negative² and denied White Motor injunctive relief barring enforcement of the questioned Minnesota legislation, referred to here as the Minnesota Pension Act.³ We disagree, and hold that the Minnesota Pension Act, as applied to White Motor, is preempted by federal labor policy.

We have earlier considered other problems relating to White Motor's pension plan.⁴ The historical facts related there are a prelude to the present litigation. White Motor closed its Minneapolis factory and attempted to terminate as of June 30, 1972, the pension plan benefiting employees at the Minneapolis plant and employees at another White Motor factory in Hopkins, Minnesota. The UAW (Union) challenged the action contending that the pension plan could not be terminated prior to May 1, 1974, the expiration date of the collective bargaining agreement then in effect. An arbitrator ruled in favor of the Union, and the federal district court sustained the award as within the arbitrator's powers granted under terms of the collective bargaining agreement. On appeal, we affirmed. During that prior litigation, White Motor took appropriate action to

line, Inc. Minneapolis-Moline, Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 373 (D. Minn. 1976).]

² The district court opinion is supported as *White Motor Corp. v. Malone*, 412 F. Supp. 372 (D. Minn. 1976).

³ The state statute involved in this litigation is the Private Pension Benefits Protection Act, ch. 437, §§1-18 (1974), Minn. Laws 2d Reg. Sess. 825-31.

⁴ *International Union, UAW v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974), cert. denied, 421 U.S. 921 (1975).

terminate the pension plan as of May 1, 1974, if the arbitrator's determination should be sustained.⁵

During the pendency of the preceding litigation, the Minnesota legislature enacted the Minnesota Pension Act, effective April 10, 1974.⁶ The statute requires full funding of pension benefits whenever an employer ceases to operate a place of employment or pension plan. The district court described and interpreted the relevant statutory provisions as follows:

The title of the Act describes it as

⁵ We observe that a later date (June 5, 1975), White Motor, and the Union entered into a new pension plan for the still-operating Hopkins plant.

⁶ Relevant statutory provisions read:

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to this employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17. [Private Pension Benefits Protection Act, ch. 437, §§3, 4 (1974), Minn. Laws 2d Reg. Sess. 828 (codified as Minn. Stat. §§181B.03, .04).]

"[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Minn. Stat. §§181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

Minn. Stat. §§181B.09-12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under §181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 375 (D. Minn. 1976).]

Pursuant to applicable provisions of the Minnesota Pension Act, the State of Minnesota notified White Motor that the corporation owed a pension funding charge of \$19,150,053. White Motor's obligations as to vesting and, particularly, as to funding under the pension plan differed significantly from obligations imposed on employers by the Minnesota Pension Act. The district court described the history of White Motor's plan

and discussed the differences in obligations imposed on the employer by its plan, as compared to the statutory obligations under Minnesota law, as follows:

In 1950, a pension plan was established for the employees of the predecessor of White Farm [White Motor]. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance employees and clerical employees at the Lake Street and Hopkins plants. Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-

five (35) year period from January 1, 1972 and January 1, 1973 respectively.

* * *

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * *

Section 6.17—No Other Benefits

No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * *

Section 9.04—Rights of Employees in the Fund

No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees

provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately \$7,000,000.

* * *

At the time the Lake Street plant was closed the pension fund was only partially funded and there was a net deficiency in the fund of approximately \$14,000,000. [*White Motor v. Malone, supra*, 412 F. Supp. at 373-75 (footnote omitted).]

The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability⁷ coupled with limited employer liability and the power to terminate, were negated by the Pension Act.

⁷ The district court noted that deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met during continuing business operations by the employer's continuing contributions to the pension fund. If the plan is terminated, the pension fund becomes fixed and pension obligations remain partially unfunded. The district court also noted that in the 1971 collective bargaining agreement the parties had agreed to amortize the unfunded deficiency over the next 35 years. *White Motor Corp. v. Malone, supra*, 412 F. Supp. at 374.

The district court rejected White Motor's summary judgment motion for a declaration of invalidity of the Pension Act on preemption grounds, and for relief by way of a temporary injunction against its enforcement, reasoning that,

[t]he employer's duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provisions be included in a pension plan.

The NLRA does not regulate the substantive terms of a collective bargaining agreement.* * *

The danger addressed in *Garmon* [359 U.S. 236 (1959)] is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not

"... regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . ."

[*White Motor Corp. v. Malone*, *supra*, 412 F. Supp. at 379 (citations omitted).]

Additionally, the district court determined the preemption doctrine was inapplicable to pension plans, on the ground that Congress in the Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C. §301 *et seq.*), as amended, explicitly recognized state power over pension plan "operation" or "administration." In that regard the district court wrote:

Congress expressly provided that states should remain

free to become involved in the regulation of pension plans when it stated:

The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. §309(b).

The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:

. . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors to leave regulatory responsibility to the States.

* * * * *

. . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations, and to place the least possible burden by way of costs and otherwise upon the plans and upon the Federal Government. [emphasis added]

S. Rep. No. 1440, 85th Cong. 2d Sess. (1958), 1958 U.S. Code Cong. and Adm. News 4137, 4153-4154.

Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. See, e.g., S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 U.S. Code Cong. and Adm. News

4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining. [*White Motor Corp. v. Malone, supra*, 412 F.Supp. at 380-81.]

We disagree.

The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining, and appears in its operation to be a unique legislative act. The Supreme Court's holdings and decisions in the area of federal labor law preemption require reversal.

Section 7 of the National Labor Relations Act (29 U.S.C. §157) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a) (5), 8(b) (3), and 8(d) of the National Labor Relations Act, as amended (29 U.S.C. §§158(a) (5), 158(b) (3), and 158 (d)), require employers and labor organizations to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment * * *." Pension plans fall within the category of "wages and other terms and conditions of employment," and are therefore mandatory subjects of bargaining under the National Labor Relations Act. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

Congress, in enacting the NLRA, refrained from specifying those aspects of labor relations which are not subject to state interference. Thus, a considerable body of law has developed in which the courts have determined when state action affecting collective bargaining is impermissible. The United States Supreme Court recently reviewed and discussed these cases in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, — U.S. —, 96 S.Ct. 2548 (1976).

Mr. Justice Brennan, speaking for the majority of the Court, noted the general division of cases into two categories:

Cases that have held state authority to be preempted by federal law tend to fall into one or two categories: (1) those that reflect the concern that "one forum would enjoin, as illegal, conduct which the other forum would find legal" and (2) those that reflect the concern "that the [application of state law by] state courts would restrict the exercise of rights guaranteed by the Federal Acts." [*Machinists, supra*, — U.S. at —, 96 S.Ct. at 2552 (citation omitted).]

The decision in *Machinists* focused on the second category. The Wisconsin Employment Relations Commission had ordered a union to cease and desist from "authorizing, encouraging or condoning any considered refusal to accept overtime assignments" from the employer after the termination of the previous collective bargaining agreement, and during negotiations for a new agreement, and the Wisconsin courts had entered a judgment enforcing the Commission's order.* The *Machinists* appeal to the Supreme Court presented the question whether federal labor policy preempted the authority of the state Labor Relations Board to enjoin a union and its members from refusing to work overtime in order to put economic pressure on the employer in negotiations for renewal of an expired collective bargaining agreement. The Court deemed this controversy as falling into the second line of preemption cases, i.e., those "focusing upon the crucial inquiry whether Congress intended that the conduct involved be unregulated because 'left to be controlled by the free play of eco-

* *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 67 Wis. 2d 13, 226 N.W.2d 203 (1975).

conomic forces.' " *Machinists, supra*, — U.S. at —, 96 S.Ct. at 2553.

The Wisconsin Supreme Court in upholding the injunction had relied on the so-called *Briggs-Stratton* case, *Local 282 Automobile Workers v. Wisconsin Board*, 336 U.S. 245 (1949). *Briggs-Stratton* held that state power was not preempted as to peaceful conduct neither protected by §7 nor prohibited by §8 of the Act, a holding premised on the statement that "[t]his conduct is either governable by the state or it is entirely ungoverned." *Machinists, supra*, — U.S. at —, 96 S.Ct. at 2553, quoting *Briggs-Stratton, supra*, 336 U.S. at 254. The *Machinist* opinion observed that the underpinning of *Briggs-Stratton* had been undercut by subsequent decisions of the Court

[f]or the Court soon recognized that a particular activity might be "protected" by federal law not only where it fell within § 7, but also when it was an activity that Congress intended to be "unrestricted by any governmental power to regulate" because it was among the permissible "economic weapons in reserve . . . actual exercise [of which] on occasion by the parties is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized." *NLRB v. Insurance Agents*, 361 U.S. at 488, 489, 80 S.Ct. at 426, 427 (emphasis added). [*Machinists, supra*, — U.S. at —, 96 S.Ct. at 2553-54.]

The *Machinists* decision expressly overruled the *Briggs-Stratton* decision as having been worn away by contrary authority. *Machinists, supra*, — U.S. at —, 96 S.Ct. at 2560.

The *Machinists* case and the cases relied on in *Machinists*⁹

⁹ See cases cited at *Machinists, supra*, — U.S. at —, 96 S.Ct. at 2555.

considered the power of states to regulate conduct by employers and employees constituting economic weapons used in the collective bargaining process. The *Machinists* opinion deemed the Court's earlier decision in *NLRB v. Insurance Agents*, 361 U.S. 477 (1960), as substantial precedent for overruling *Briggs-Stratton*. In *Insurance Agents*, on-the-job activities by union members interfered with the employer's business, and thus put economic pressure on the employer to accede to the union's bargaining demands. The NLRB held that proof of these tactics justified its determination that the union had failed to bargain in good faith as required by §8(b) (3) of the NLRA. The Supreme Court disagreed:

[A]part from this essential standard of conduct [good faith], Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences.

* * *

[I]f the Board could regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms on which the parties contract. As the parties' own devices became more limited, the Government might have to enter even more directly into the negotiation of collective agreements. Our labor policy is not presently erected on a foundation of government control of the results of negotiations. [*Insurance Agents, supra*, 361 U.S. at 488, 490 (emphasis added).]

Machinists, in its review of pertinent Supreme Court

cases,¹⁰ makes it abundantly clear that neither the states nor the National Labor Relations Board may attempt to influence the substantive terms of collective bargaining agreements by regulating the conduct of the parties to collective bargaining negotiations. These agreements are to be controlled by and left to the free play of economic forces. If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining.

Appellant in seeking reversal relies heavily on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959). *Oliver* holds that by reason of the preemption doctrine, a state anti-trust statute cannot apply to negate terms of a collective bargaining agreement setting wage rates. In that case, a collective bargaining agreement between a group of labor unions and a group of interstate motor carriers prescribed a wage scale for truck drivers and, in order to prevent evasion thereof, provided that truck owner-drivers should be paid, in addition to the prescribed wage, not less than a specified minimum rental for the use of their vehicles. Respondent *Oliver*, a truck owner-driver member of the union had obtained an injunction in the state court, affirmed by the Ohio Supreme Court, to prevent the motor carriers and the local union from carrying out the minimum rent provision on the ground that such term of the collective bargaining agreement violated Ohio antitrust laws. The Supreme Court reversed. The state antitrust law could

¹⁰ See cases cited in *Machinists, supra*, — U.S. at —, 96 St.Ct. at 2555-59. We, of course, here are not concerned with certain aspects of labor relations which courts have recognized as falling within the police power of the states, such as actual or threatened violence to persons, or destruction of property, or where the activity regulated is of peripheral concern to federal labor relations policy. See *Machinists, supra*, — U.S. at —, 96 S.Ct. at 2551, notes 2 and 3.

not be applied to bar the contracting parties from carrying out of the terms of a collective bargaining agreement upon a subject as to which federal law directed them to bargain. The Court said:

We must decide whether Ohio's antitrust law may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain. Little extended discussion is necessary to show that Ohio law cannot be so applied. * * * The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, is the promotion of collective bargaining; to encourage the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations, and thereby to minimize industrial strife. See *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45; *Labor Board v. American National Ins. Co.*, 343 U.S. 395, 401-402. Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed. * * * [*Oliver, supra*, 358 U.S. at 295.]

Specifically focusing on the threatened impact of the state law on the collective bargaining process, the court said:

To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here. Federal law here created the duty upon the parties to bargain collectively; Congress has provided for a sys-

tem of federal law applicable to the agreement the parties made in response to that duty * * *; and federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide * * *. We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions. * * * Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State. * * * The solution worked out by the parties was not one of a sort which Congress has indicated may be left to prohibition by the several States. * * * We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce. If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it. [*Oliver, supra*, 358 U.S. at 295-97 (citations omitted).]

The district court rejected *Oliver* as dispositive in this case, stating:

Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the collective bargaining agreement.

* * *

State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. *See, e.g., Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 * * * (1975); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 * * * (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective action by employees would produce a direct conflict with the national labor policy.

The Court has stated that:

[p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

Connell, supra, 421 U.S. at 636, 95 S.Ct. at 1842, 44 L.Ed.2d at 434.

The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act. [*White Motor Corp. v. Malone, supra*, 412 F. Supp. at 381.]

In our view, *Oliver* is not to be read so restrictively. We emphasize the Court's language:

We believe there is no room in this scheme [of federal labor law] for the application here of the state policy limiting the solutions that parties' agreement can provide to the problems of wages and working conditions. [*Oliver, supra*, 358 U.S. at 296.]

Moreover, in *Labor Board v. Insurance Agents*, the Court cited *Oliver* in support of the following statement:

But apart from this essential standard of conduct Congress intended that the parties should have wide latitude in their negotiations unrestricted by any governmental power to regulate the substantive solution of their differences. See *Teamsters Union v. Oliver, supra*, at 295. [*Insurance Agents, supra*, 361 U.S. at 488.]

The Supreme Court in *Machinists* also relied on specific language in *Oliver* as a basis for overruling *Briggs-Stratton*.

Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "[s]ince the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Local 24 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.-C.I.O. v Oliver*, 358 U.S. 283, 296 * * * (1959). [*Machinists, supra*,—U.S. at—, 96 S.Ct. at 2559.]

Thus, *Oliver* stand for the general proposition that a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement.

Finally, we turn to the district court determination that the federal Welfare and Pensions Plans Disclosure Act, Pub. L.

No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C. §301 *et seq.*) (Disclosure Act), expressly authorizes substantive state regulation of pension plans. The statutory language relied on by the district court is as follows:

The provisions of this chapter * * * shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee, welfare, or pension benefit plans, or in any manner to authorize the operation or administration of such plan contrary to any such law. [29 U.S.C. §309(b).]¹¹

Neither this language nor statutory history suggests that Congress intended to regulate substantive provisions, performance of, or the funding of any employee benefit plan or to authorize such regulation by the states.

The express statutory language relied upon by the district court applies to duties and liabilities, civil or criminal, imposed upon persons operating and administering employee welfare or pension benefit plans to conserve and keep safe those funds. The legislative history emphasizes the limited purpose of this legislation and that the Act's provisions to not affect substan-

¹¹ The Welfare & Pension Plans Disclosure Act has been superseded by the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law enacted on September 2, 1974. The ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. §1031, and replaced it with new reporting and disclosure provisions. 29 U.S.C. §§1021-1031. The district court noted:

ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. §1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions of legislative history. [*White Motor Corp. v. Malone, supra*, 412 F. Supp. at 380 n. 6.]

tive terms of employee benefit plans. We turn to the Senate Report as the Senate Bill was passed in lieu of the House Bill. See 3 U.S. Code Cong. & Adm. News 4137 (1958). That Senate Report, in part, reads:

Complete disclosure of the details of welfare and pension plan operations provides the most effective single deterrent against abuses and the many other weaknesses of these plans. It would provide the greatest incentive to good management and investment policies and the best protection to the interests and rights of employees, employers, and the Government alike [*Id.* at 4153.]

In further discussion of the principles and purposes of the Senate Bill, the Report adds:

S. 2888 provides for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. It is the policy of this bill to protect the revenues of the United States, the interests of participants in the plans, their beneficiaries, the employers and the public, and to conserve the moneys involved so as to assure their utilization for their intended purposes.

The bill would give the employee-beneficiaries of these plans an accounting for the money they spend and which is spent in their behalf for future security benefits and

permits them to appraise the merits of these plans, which in many cases are held out to them as a competitive inducement of employment. It would give the employee-beneficiaries protections comparable to those provided in other large-scale investment operations. It is designed to deter dishonesty, mismanagement, and waste by allowing public scrutiny of the financial operations of such plans, and it accomplishes disclosure of the finances of these plans in one operation for all purposes. [*Id.* at 4154-55.]

Additionally, the report discusses criminal penalties and, in that discussion, expressly negates any purpose of the enactment to regulate substantive provisions:

Although making no attempt to regulate employee-benefit plans, the bill, in addition to the necessary authority to the Secretary of Labor to enforce the administration of the legislation, provides severe criminal sanctions for willful, false statements, the destruction of records, embezzlement, kick-backs, and other self-dealing. [*Id.* at 4157.]

Clearly, the preemption disclaimer provision of the Disclosure Act, §309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administering, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

The construction to the contrary pressed upon us by the appellee would turn upside down well-established labor law principles.

An appreciation of the true character of national labor policy expressed in the NLRA and LMRA indicates that

in providing a legal framework for union organization, collective bargaining, and the conduct of labor disputes, Congress struck a balance of protection, prohibition, and laissez faire in respect to union organization, collective bargaining, and labor disputes that would be upset if a state could also enforce statutes or rules of decision resting upon its views concerning accommodation of the same interests. [Cox, *Labor Law Preemption Revisited*, 85 Harv.L.Rev. 1337, 1352 (1972).]

The economic travail suffered by retirees of the former Minnesota Moline Company plant in Minneapolis, Minnesota, did not result from misapplication, misappropriation, or misuse of any pension trust funds. The employees' expectation of pension benefits remained subject to change by reason of changing economic conditions, because the employer reserved the right to terminate the plan. Blame cannot be attached to either the Union or the employer for the changed economic conditions which resulted in the closing of the Lake Street plant and the termination of the pension plan. The parties (union and employer) agreed upon a pension plan that was never fully funded, or otherwise guaranteed. We presume that the parties agreed to increase current wages, perhaps at the expense of adequately funding retirement benefits.

If the legislative solution presented here can be sustained, then in another day a differently-minded state legislature could take away from working people contract benefits obtained through hard, fair bargaining. We construe national labor policy to mandate "hands off" by the states in this area of labor relations.

We reverse and remand for the entry of judgment in conformity with this opinion.

A true copy.

Attest: Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 76-1266

WHITE MOTOR CORPORATION and
WHITE FARM EQUIPMENT COMPANY,

Appellees,

vs.

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,

Appellants.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. I. Malone and the State of Minnesota, the above-named appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Eighth Circuit filed and entered on December 2, 1976, reversing the judgment of the United States District Court for the District of Minnesota dated March 18, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

Dated: December 7th, 1976.

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MINNESOTA PRIVATE PENSION BENEFITS
PROTECTION ACT

Minn. Stat. § 181B.01 et seq. (1976)

CHAPTER 181B

PRIVATE PENSION BENEFITS PROTECTION

Sec.

- 181B.01 Citation
- 181B.02 Definitions
- 181B.03 Pension refunding charge, vested benefits prior to pension benefits protection act
- 181B.04 Nonvested benefits prior to act
- 181B.05 Vested benefits under act
- 181B.06 Nonvested benefits under act
- 181B.07 Exceptions to pension funding requirements
- 181B.08 Notice of intention to cease operations
- 181B.09 Investigation by commissioner
- 181B.10 Determination of amount of benefits; agreements as to benefits
- 181B.11 Certification of amounts available
- 181B.12 Purchase of prepaid deferred annuity
- 181B.13 Recovery of amounts due
- 181B.14 Acts constituting termination
- 181B.15 Rules and regulations
- 181B.16 Protection of funds from execution or process
- 181B.17 Effective date; effect of federal act in area

181B.01 CITATION. Sections 181B.01 to 181B.17 shall be known and may be cited as the "private pension benefits protection act".

[1974 c 437 s 1]

181B.02 DEFINITIONS. Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

- (a) The complete termination of operations at a place of employment, or
- (b) A substantial reduction in the number of employees at a place of employment, or
- (c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under section 401 of the United States Internal Revenue Code of 1954 as amended, but does not mean any plan established by collective bargaining agreement which is excluded from the coverage of 29 U.S.C. 186(c)

(5) (B) by 29 U.S.C. 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by Section 501(c) (3) of the United States Internal Revenue Code of 1954 as amended. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10. "Accrued portion of the normal retirement benefit" with respect to employees of ten or more years of covered service means the larger of either the present value of the pension benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if he continued to earn pension credits based on the covered service he would have accumulated had he continued as a plan participant until normal retirement age or if he continued to earn annually until normal retirement age the same

rate of compensation as that which he had been earning prior to cessation, upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator of which is the total number of years he would have had in covered service in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07, clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid

vacations and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced to part time status as part of a plan to evade provisions of sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside

in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

[1974 c 437 s 2]

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 3]

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon ser-

vice occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 4]

181B.05 VESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 5]

181B.06 NONVESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974, of such employees

of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 6]

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS. An employer shall not be liable for any pension funding charge under sections 181B.03 to 181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (b) in at least eight of the ten years immediately prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (c) when the pension plan has been instituted less than five years prior to

cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended.

[1974 c 437 s 7]

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

[1974 c 437 s 8]

181B.09 INVESTIGATION BY COMMISSIONER. Upon receipt of such notification, or upon his own initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees, and any other facts or circumstances concerning the employer, his employees and the pension plan for such employees as may be necessary or useful to the commissioner to carry out his duties and responsibilities under sections 181B.01 to 181B.17. The

investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to him any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek, through the attorney general acting on his behalf, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

[1974 c 437 s 9]

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS. As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to his satisfaction. Nonvested and vested pension benefits may be compromised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under sections 181B.01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the com-

promised pension credits and the value of the settlement must be as constant as is practicable.

[1974 c 437 s 10]

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE. After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 and 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due the employer shall be liable for interest on the amount due at the rate of eight percent per annum until

the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

[1974 c 437 s 11]

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY. The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

[1974 c 437 s 12]

181B.13 RECOVERY OF AMOUNTS DUE. The commissioner shall maintain a separate record of each employee owed a pension funding charge under sections 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

[1974 c 437 s 13]

181B.14 ACTS CONSTITUTING TERMINATION. For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of

the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when he determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been terminated because of the employer's ceasing to operate its place of employment or a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

[1974 c 437 s 14]

181B.15 RULES AND REGULATIONS. The commissioner may promulgate rules and regulations to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes of sections 181B.01 to 181B.17.

[1974 c 437 s 15]

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS. The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

[1974 c 437 s 16]

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA. Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institu-

tion of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

[1974 c. 437 s 17]

Excerpts from Exhibits Attached to and Incorporated in Affidavit of H. Herbert Phillips.

A. Excerpts from Exhibit 2 to Affidavit of H. Herbert Phillips, consisting of Cover Page and page 123, which contains "Exhibit C," of the 1971-74 Collective Bargaining Agreement.

1971-1974
AGREEMENT

between
MINNEAPOLIS MOLINE
and the
INTERNATIONAL UNION UAW
and it's affiliated Local Unions 107-932
PRODUCTION & MAINTENANCE
EXHIBIT "C"—PENSIONS

The parties hereby have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this Agreement the same as if set forth at length herein. 20.0
EXHIBIT "D"—SUPPLEMENTAL UNEMPLOYMENT
BENEFITS

The parties hereto have agreed to a Supplemental Unemployment Benefit Agreement and Plan, printed under separate cover, which is made a part of this Agreement the same as if set forth at length herein. 21.0

EXHIBIT "E"—MINNEAPOLIS-MOLINE PLANT SAFETY PROGRAM

The following is the safety program for the manufacturing

operations of Minneapolis-Moline, set up on the basis of management and labor cooperation in its function. 22.0

The program is to provide a separate plant safety program at Hopkins and Lake Street.

1. Union Safety inspectors will be designated in each of the areas listed below:

a. Lake Street Plant	
Local No. 932	Total
Fabrication—	
AD—AG	1
AV	1
AH	1
AC	1
WZ—Heat Treat	1
KA—KG	1
KB	1

B. Excerpts from Exhibit 3 to Affidavit of H. Herbert Phillips consisting of Articles I, VI, IX and X of the 1971 Pension Agreement and Plan.

MINNEAPOLIS-MOLINE PENSION PLAN

ARTICLE I

Name of Plan

Section 1.01—Name of Plan.

The name of the retirement plan herein set forth is "Minneapolis-Moline Pension Plan." It is sometimes hereinafter for brevity referred to as the "Plan."

ARTICLE VI

Pension Benefits

Section 6.01—On Retirement at or after Normal Retirement Date.

Termination of the employment of a participant for any

cause at or after his Normal Retirement Date shall be deemed to be a retirement, and upon such a retirement of a participant who has completed ten or more years of Credited Service he shall be entitled to a pension payable monthly for life in an amount computed in accordance with the following Benefit Class Table, multiplied by his years of credited service, less his deductions. The first of such payments shall be made on the first day of the month following the month in which his retirement occurs and the last on the first day of the month in which his death occurs.

BENEFIT CLASS TABLE

<i>Non-incentive Classified Hourly Rate</i>	<i>Incentive Classified Hourly Rate</i>	<i>Office Unit Classified Hourly Rate</i>	<i>Benefit Rates - Benefits Commencing</i>		
			<i>Prior to 1/1/72</i>	<i>1/1/72 to 12/31/72</i>	<i>1/1/73 or later</i>
\$3.75 and less	\$ None	\$3.45 and less	\$5.50	\$6.50	\$7.25
\$3.76 - \$4.31	\$3.32 and less	\$3.46 - \$4.21	\$5.75	\$6.75	\$7.50
\$4.32 and over	\$3.33 and over	\$4.22 and over	\$6.00	\$7.00	\$7.75

The applicable benefit rate for each employee shall be determined by the Classified Hourly Rate for the classification held by the employee for the greatest number of calendar days during the 24 consecutive months immediately preceding his last day worked. For the purpose of determining the applicable Benefit Class Code for any employee who retires during the life of this Agreement, the classified hourly rates as in effect on May 1, 1971, shall be applicable with respect to the above table for the duration of this Agreement, notwithstanding the fact that such rates shall be adjusted upward.

Section 6.02—On Early Retirement.

(a) (1) Any employee who shall have been in active employment on/or after effective date of the Plan and who, on/or after May 1, 1971 (but not retired prior to such date)

(i) Shall have attained the age of 60 years but not the age of 65 years, and shall have ten (10) or more years of credited service, or

(ii) Shall have attained the age of 55 years but not the age of 60 years, and whose combined years of age (to the nearest 1/12) and credited service shall total at least 85, or

(iii) Shall on and after 1/1/74 attained any age with 30 or more years of credited service, may retire at his option and upon the employee's retirement he shall be eligible for a regular early retirement pension determined in accordance with paragraph (b) of this Section 6.02.

(2) Any employee who shall have been in active employment on/or after May 1, 1971, and who, on/or after May 1, 1971. (But not retired prior to such date), shall have attained the age of 55 years but not the age of 65 years, and shall have ten (10) or more years of credited service, may be retired at the option of the Company or under mutually satisfactory conditions, and upon the employee's retirement he shall be eligible for a special early retirement pension determined in accordance with paragraph (c) (ii) of this Section 6.02.

(b) The monthly regular early retirement pension payable to an employee for his lifetime who shall retire at his option under Section 6.02 (a) (1) above, and who shall make application to the Committee therefore, shall be a monthly pension commencing either on/or after the date of early retirement as specified in his application, in an amount determined under 6.01 above multiplied by the below percentage for his attained age on the date when the pension commences in accordance with his election:

<i>Age When Pension Commences</i>	<i>Percentage</i>	<i>Age When Pension Commences</i>	<i>Percentage</i>
47	30.4%	55	57.9%
48	32.8	56	63.5
49	35.4	57	69.4
50	38.3	58	75.2
51	41.5	59	80.8
52	45.0	60	86.7
53	48.9	61	93.3
54	53.2	62 or over	100.0

* For each additional full month of attained age, after payment of pension commences, the applicable percentage shall be determined by a straight-line interpolation from the percentage applicable to the next lower age to the percentage applicable to the next higher age in the above table, rounded to the nearest 1/10 of 1%.

(c) The monthly special retirement pension payable from the Pension Fund to an employee who shall retiree at the option of the Company or under mutually satisfactory conditions under the provisions of Section 6.02 (a) (2) of this Article VI, shall be as follows:

(i) that determined under 6.01 above plus

(ii) a temporary benefit of \$6 for months commencing prior to January 1, 1972 and \$7.50 for months commencing on and after January 1, 1972, times his years of credited service up to a maximum of 25 years, payable, if disabled, only for months for which a Social Security disability insurance benefit is denied on the merits but not beyond the qualifying age for an unreduced Social Security benefit by reason of age. An employee discharged for cause after such employee (i) shall have attained age 60 but before age 65 and shall have

ten (10) or more years of credited service, or (ii) shall have attained age 55 but not age 60 and whose combined years of age (to the nearest 1/12) and credited service shall total at least 85, shall be considered a retired employee and his monthly pension shall be the regular early retirement pension as provided under Section 6.02 (b) of this Article VI.

(d) For the purposes of Section 6.02 (c) of Article VI, a retired employee shall be considered as being eligible for benefits payable under the Federal Social Security Act even though he does not qualify for, or loses, such payments through failure to make application therefor or entering into covered employment.

Section 6.03—Termination of Employment Other Than Retirement.

(a) If the termination of employment of a participant shall occur after he shall have attained age 40 and completed 10 or more years of credited service and he is not eligible for any other pension, and if he files a timely application, he shall be entitled to a deferred pension payable monthly for life at the benefit rate determined in 6.01 above in effect at the time the termination of employment occurs times his years of credited service at date of termination of employment.

(b) The deferred pension shall be payable on the first day of the month following the month, (whichever is later),

(i) In which such former employee attains age 65 and has filed a written request with the employer not more than 60 days prior to his 65th birthday, or

(ii) In which the Company receives a written request for such pension, but not later than his 68th birthday. Otherwise, no deferred pension shall be payable at any time.

(c) If a former participant who is eligible for a deferred pension has not applied by the 30th day prior to the date he

attains age 65, a notice will be sent to his last known address informing him of his right to apply for a deferred pension.

Section 6.04—On Disability Retirement.

(a) An employee age 40 or over with 10 or more years of credited service who is determined by the Pension Committee to be totally and permanently disabled by bodily injury or illness so as to be prevented thereby from engaging for remuneration or profit in any occupation or employment with the Company covered by the then current collective bargaining agreement providing for his seniority shall be retired and be eligible for a disability retirement pension after such disability has continued for at least 52 weeks.

(b) The employees' monthly pension shall be

(i) that determined under 6.01 plus

(ii) a temporary benefit of \$6, for months commencing prior to January 1, 1972, and \$7.50 for months commencing on or after January 1, 1972, times his years of credited service (up to a maximum of 25 years), payable only for months for which a Social Security disability insurance benefit is denied on the merits but not beyond the qualifying age for an unreduced Social Security benefit by reason of age.

For purpose of this Section 6.04 (b) of Article VI, a retired employee shall be considered as being eligible for benefits payable under the Federal Social Security Act by reason of disability even though he does not qualify for, or loses such payments through failure to make application therefor.

(c) When a retired employee receiving a total and permanent disability retirement pension under Section 6.04 (c) shall reach normal retirement age, or the qualifying age for an unreduced Federal Social Security Benefit for age or disability, he thereafter shall receive a normal retirement pension in accordance with the provisions of Section 6.01 of this Article

VI, and shall no longer be considered to be on total and permanent disability retirement.

(d) The absence of an employee from active employment at the time he would be eligible for a pension under the Plan, shall not preclude his retirement without return to employment, provided that such absence is due to disability or sick leave, layoff or leave of absence approved by the Company, and provided that he shall not have incurred a break in his seniority since he was last in employment. The pension payable in the case of such employee shall not commence until the cessation of any weekly sickness or accident benefits payable to him by the Company, or from any source or fund to which the company shall have contributed directly or indirectly, except benefits payable under Workmen's Compensation other than weekly loss of wages.

Section 6.05—Deductions.

As used herein, "Deductions" means an amount which is to be separately calculated from time to time as to each Pensioners, and which may vary from month to month, which is aggregate of the following amounts:

(a) The monthly amount of any old age or retirement payments which the Pensioner is entitled to receive under any Federal or State law, other than the Federal Social Security Act, under or in support of which the Company contributes through taxes or otherwise, including but not limited to public benefits for disability as to employees retiring for that cause.

(b) The monthly amount of payments which the Pensioner is entitled to receive under any other pension or retirement plan financed or supported in whole or in part by payments whether directly or into or through a fund made by the Company.

(c) The monthly amount, if any, which the Pensioner receives as unemployment compensation benefits, which in whole or in part, is chargeable to the unemployment compensation account of the Company.

(d) The monthly amount which the Pensioner receives under any Workmen's Compensation Act on account of compensable injury or disease other than for the loss of use of a member or permanent loss of mental faculties incurred while in the employ of the Company.

(e) The monthly amount which the Pensioner receives under any other disability plan wholly or partially financed by the Company.

In case any payments includable in the Pensioner's Deductions is received by him on any basis other than monthly, the amount thereof shall be converted to a monthly basis, except that all cases where such payments are in a lump sum the amount of the lump sum payment shall be disregarded in calculating the Pensioner's Deductions, but no pension shall be payable to him until the aggregate of the monthly payments which he would otherwise receive hereunder equal the amount of such lump sum payment. In the event the monthly deductions of a Pensioner shall exceed the amount from which they are to be deducted, the excess shall not be accumulated or deducted in later months.

Section 6.06—Total and Permanent Disability.

No determination that a participant or pensioner is totally and permanently disabled shall be made unless it shall appear on the basis of competent medical testimony satisfactory to the Pension Committee that such person is unable because of his physical and mental condition to engage in remunerative occupation or employment, that such condition was not caused by his engaging in a criminal act or an intentionally self-

inflicted injury or illness, that such condition has existed for 52 weeks or more, and that such condition is presumably permanent. Permanent and total disability shall be conclusively deemed to have terminated if the Pensioner is re-employed by the Company in a regular position or enters other employment in a regular position.

Section 6.07—Conditions Precedent.

No one shall be entitled to a pension hereunder until his right thereto shall have been finally determined by the appropriate Pension Committee nor until he shall have submitted to such Committee in such form as the Committee requires all data requested by the Committee, including but not limited to, proof of date of birth and, in disability cases, medical evidence of continued disability from time to time.

Section 6.08—No Duplication of Pensions.

There shall be no duplication of pensions under this Plan. If a participant or pensioner is entitled to a pension under one of the foregoing sections, he shall not be entitled to a pension under any other of said sections.

Section 6.09—Source of Pensions.

Pensions shall be payable only from the Fund, and rights to pensions shall be enforceable only against the Fund.

Section 6.10—Payment of Small Amounts.

If the amount of the pension is less than \$10.00 a month, payments may be made quarterly in advance in an actuarially equivalent amount, and if such quarterly payments should be less than ten dollars (\$10.00) the pension payments may be made semi-annually in advance in an actuarially equivalent amount upon determination by the appropriate Pension Committee in each case on the advice of the Actuary.

Section 6.11—Re-employment.

In the event a Pensioner shall be re-employed by the Com-

pany, his right to pension payments shall cease during the period of such re-employment, and shall continue upon his subsequent termination of employment in the same amounts as he would have received had he not re-entered the employ of the Company.

Section 6.12—Non-alienation of Benefits.

The Benefits hereunder are intended for the personal protection of the participants and the pensioners as herein provided. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such benefits, except as specifically provided in the Plan. If a participant or pensioner shall attempt to or shall alienate, sell, transfer, assign, pledge, encumber, or charge his pension, or any part thereof, or if because of his bankruptcy or the happening of any other event pension payments which would otherwise be made to him would become payable to anyone else or would not be enjoyed by him, his right to such pension payments shall thereupon terminate, but the appropriate Pension Committee may in its discretion authorize the payment of the same to or for the benefit of such pensioner, his spouse, children, or other dependants, or any of them, in such manner as such Committee may deem proper.

Section 6.13—Optional Settlements.

(a) In lieu of any pension which would otherwise be payable, an employee eligible therefor who has a spouse (for retirements with benefits commencing prior to January 1, 1972 and deferred vested separations prior to January 1, 1972, the

employee must have been married to such spouse for at least one year) may make written election on a form approved by the Pension Committee to receive a reduced pension during his lifetime with the provisions that following his death, a monthly optional survivor benefits shall be payable to his spouse as named in said election, during her further lifetime, if said spouse shall survive the employee and the employee has not cancelled the election, provided that:

(1) The election of survivor benefit option, for retirements with benefits commencing prior to January 1, 1972 and for separations prior to January 1, 1972 with deferred vested benefits, shall be made under the provisions of the Plan prior to this amendment.

(2) For retirements with benefits commencing on or after January 1, 1972 (and deferred vested separations on or after such date) the election of survivor benefit option shall be made at the time of application for a pension, said election to become effective on the date the first pension payment is payable. However, for disability retirements prior to age 55, the election shall be made during the calendar month in which the employee attains age 55, and it shall be effective on the first day of the calendar month following. Notwithstanding, if the employee has been married to his spouse less than one year on the date the election would otherwise become effective, the effective date thereof shall be deferred until the first day of the calendar month following the date the employee and his spouse have been married for one year.

(3) If the employee or the employee's designated spouse dies before the effective date of the survivor benefit election, the election shall be cancelled. An employee may cancel a survivor benefit election any time prior to its effective date. After a survivor option election becomes effective, an em-

ployee who retired with benefits commencing after January 1, 1972 (and deferred vested separations after such date) may cancel it only if the employee's spouse predeceases the employee or the employee and his spouse are divorced by court decree. Such a cancellation will be effective on the first day of the third month following the calendar month in which the appropriate Committee receives the employee's written notice of cancellation accompanied by satisfactory evidence of the death or divorce of his spouse.

(b) If the employee's age is the same as his spouse's age, the pension payable to the employee on and after the effective date of the election shall be reduced by 5% of the pension otherwise payable, but disregarding any temporary benefit payable for months for which the employee is denied a Social Security disability insurance benefit on the merits. Such percentage shall be reduced by subtracting $1/2$ of 1% for each year in excess of 5 years that the spouse's age exceeds the employee's age (up to a maximum of 5%) (the age of each, for purposes hereof, being the age at his or her last birthday prior to the effective date of the election) and increased by adding $1/2$ of 1% for each year in excess of 5 years that the spouse's age is less than the employee's age. An employee cancels his election of survivor option after its effective date because of the death or divorce of his spouse in accordance with Section 6.13 (a) (3), his pension will be increased on and after the effective date of cancellation by disregarding said election.

(c) The optional survivor benefit payable to the spouse, during the further lifetime of such surviving spouse, shall be 55% of the employee's reduced pension, disregarding any temporary benefit payable for months for which the employee is denied a Social Security disability insurance benefit on the merits, provided that no benefit shall be payable under this

subsection for any month for which the surviving spouse of a re-employed pensioner may be entitled to receive a transition or bridge survivor benefit under the insurance plan of the Company.

Section 6.14—Automatic Spouse Option.

If an Employee, age 55 or older, dies after he has met the age and credited service requirements for a regular early or normal retirement pension but prior to the date as of which his pension begins, and if he leaves a surviving spouse to whom he has been married for at least one year, a monthly automatic survivor benefit shall be payable for the lifetime of such surviving spouse. The automatic survivor benefit payable to such spouse shall be the amount which would have been payable to such surviving spouse if the employee had retired on the date of his death and had effectively elected the survivor benefit option under Section 6.13 above, provided that no benefit shall be payable hereunder for any month for which the surviving spouse may be entitled to receive a transition or bridge survivor benefit under the insurance plan of the Company.

Section 6.15—Supplemental Allowance.

(a) An employee who

(i) becomes eligible for a disability retirement pension, a special early retirement pension or a regular early retirement pension, and

(ii) agrees to restrict his participation in the labor force within the earnings limit of the then applicable federal Social Security Act, and

(iii) files his application for a pension within two (2) years of the last day worked for the Company shall receive a monthly supplemental allowance in addition to his pension provided, however, that an employee who re-

tires while on an approved leave of absence for service with the International Union shall have his supplemental allowance based only on his actual credited service as an employee of the Company excluding any credited service while on such leave of absence.

(b) Each monthly supplemental allowance shall be that amount which when added to his total monthly pension will equal the lesser of (A) or (B) below:

(A) (i) with respect to amounts payable for months prior to January 1, 1973, \$400 reduced by 1/360th for each month that his credited service is less than 30 years, and *

(ii) with respect to amounts payable for months on or after January 1, 1973, \$450 reduced by 1/360th for each month that his credited service is less than 30 years, provided, however,

(iii) for an employees with at least 30 years credited service who retires with benefits commencing on or after January 1, 1974, it shall be \$500 for months prior to the first month after attainment of age 62.

and if less than age 60 at retirement, reduced in all cases by multiplying the amount by 60 over the number of months from retirement to and including the month in which he would reach age 65.

(B) 70% of $173\frac{1}{3}$ times his average hourly earnings as determined for the purpose of computing his Union dues under the current applicable collective bargaining agreement, using the date of retirement as if it were the payroll date for computing Union dues

reduced in either case by \$7.50 (\$6.00 for months commencing prior to January 1, 1972) times years of credited service up to a maximum of 25 years for any months for which the em-

ployee is or becomes eligible for a Social Security disability insurance benefit, or after which the employee attained the qualifying age for an unreduced Social Security benefits by reason of age.

The amount of supplemental allowance shall be computed by disregarding any election of survivor benefit option and in the case of regular early retirement as if the early retirement pension began at retirement.

(c) The supplemental allowance shall commence on the first day of the month following the later of (i) the date on which the employee retires, or (ii) the date on which a timely application is filed, and shall be payable monthly thereafter and shall cease on the earlier of age 65, death, re-employment by the Company, or cessation of pension for any other reason.

If the retiree has earnings after retirement in any calendar year in excess of the amount permitted under the then current federal Social Security Act, a penalty equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding supplemental allowance which the retiree would otherwise be entitled to receive until the full amount of such penalty is satisfied.

If any retiree shall be re-employed by the Company, and his seniority restored, the forfeiture shall not affect adversely any right he would otherwise have to receive a supplemental allowance if he should again cease employment.

Each retiree receiving a supplemental allowance may be required, in accordance with procedures established by the Committee, to certify that his earnings have not been in excess of the permitted amount and to furnish verification of the amount of his earnings. Unless otherwise recovered, the amount of any payments of supplemental allowance made

after a retiree shall have ceased to be entitled to receive such allowance because of excess earnings, may be deducted from his future monthly pension payable to him.

Section 6.16—Provisions Applicable to Terminations Prior to May 1, 1971 (and to Certain Terminations on or after May 1, 1971).

(a) The benefits, if any, payable to employees whose seniority is terminated prior to May 1, 1971, shall be determined in accordance with the Plan in effect prior to this amendment as modified by this Section.

1. The following sections of this amended Plan shall be applicable to employees who lost seniority prior to May 1, 1971 and to employees who lost seniority after April 30, 1971 and retired prior to January 1, 1972.

Section

6.13 (a) (3) and (b)

Application

Cancellation of survivor option upon death or divorce (restoration) provided that in the case of divorce the cancellation only applies to the increases in pension shown in paragraph 2 below.

2. The following table summarizes the increases in benefits effective January 1, 1972 and January 1, 1973 and should be read in conjunction with the further provisions of this Section:

Date Monthly Pension Commenced to Be Payable	Normal Pension* Per Year Maximum Credited Service Increased			Temporary Benefit per Year Credited Service Increased		
	From	To 1/1/72	To 1/1/73	From	To 1/1/72	Maximum Amount
Prior to 1/1/57	\$6.45**	\$6.95**	\$7.45**			
1/1/57 to 12/31/59 (Local 337 & 1147 to 2/29/60)	4.20	4.70	5.20			
1/1/60 to 4/30/62 (Local 337 & 1147 from 3/1/60)	4.60	5.10	5.60			
5/1/62 to 4/30/63	4.95	5.45	5.95			
5/1/63 to 4/30/66	5.25	5.75	6.25	\$2.80	\$3.80	\$155
5/1/66 to 4/30/68	5.25	5.75	6.25	5.20	6.20	155
5/1/68 to 4/30/69	5.50 5.75 6.00	6.00 6.25 6.50	6.50 6.75 7.00	5.20	6.20	155
5/1/69 to 4/30/71	5.50 5.75 6.00	6.00 6.25 6.50	6.50 6.75 7.00	6.00	7.00	175

* Including, if applicable, \$1.00 (50¢ as of 1/1/72 increase) waived for election of special survivor option.

** Reduced by Social Security Benefits in effect at retirement.

NOTES:

Pensions payable on and after January 1, 1972 and January 1, 1973 for early retirements under the Plan shall be increased in the same proportion as the increase in normal pension per year of credited service as shown in the table above.

Temporary benefits payable for months for which a Social Security disability insurance benefit is denied shall be increased as shown in the table above.

Optional survivor benefits (but not special survivor benefits) payable on and after January 1, 1972 and January 1, 1973 shall be increased in the same proportion as the normal pension increase, provided the retired employee is living on such dates.

Deferred Vested Pensions are not increased under this Paragraph 2.

3. Supplemental allowances payable on and after January 1, 1972 and January 1, 1973 shall be redetermined as if the new applicable rates set forth in paragraph 2 preceding had been in effect when the retired employee's benefits commenced and, on and after January 1, 1973, the supplemental allowance before offsets and reductions were \$450 instead of \$400, provided, however, that the offset per year of credited service applicable if the retired employee is eligible for an unreduced Social Security Benefit shall be increased in accordance with the following table:

<i>Date Retired Employee Became Eligible for Unreduced Social Security</i>	<i>Date Monthly Pension Commenced to be Payable</i>	<i>Offset per Year Credit Service up to Maximum Increased</i>		
		<i>From</i>	<i>To</i>	<i>Maximum</i>
Up to 4/30/69	Up to 4/30/69	\$5.20	\$6.20	\$155
5/1/69 to 4/30/71	5/1/69 to 4/30/71	6.00	7.00	175
5/1/71 or later	5/1/71 to 12/31/71	6.00	7.50	187

If the survivor benefit option had been elected prior to May 1, 1971, this redetermination shall not reduce the supplemental allowance by more than the increase in the retired employee's monthly pension.

4. Employees who retired under the disability provisions of the Plan prior to July 1, 1968 and who were not previously eligible to elect the 1968 special survivor option because they had not attained age 60 prior to July 1, 1968, may elect a Special Survivor option effective January 1, 1972, or, if later, the month following attainment of age 60. If elected, the retired employee will accept a reduction in his normal pension of 50 cents per month for each year of credited service for benefits payable until January 1, 1973, and \$1 per month for each year

of credited service for benefits payable on and after January 1, 1973. The benefit payable to the surviving spouse shall be 80 cents per month for each year of credited service in the event of the death of the employee prior to January 1, 1973 and \$1.60 per month for each year of credited service in the event of the employee's death on or after January 1, 1973.

Section 6.17—No Other Benefits.

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

ARTICLE IX

Funding

Section 9.01—Establishment of Fund.

The Company shall establish one of more funds, herein collectively referred to as the "Fund", in which shall be held and invested, administered and disbursed all moneys contributed by the Company from time to time in support of the Plan.

Section 9.02—Administration of Fund.

The Fund shall be administered by a Trustee or Trustees selected and appointed by the Company or by an insurance company selected by the Company or by any combination of one or more trustees and one or more such insurance companies. The Company shall have the sole right to remove any Trustee so appointed by it or to replace any insurance company so selected by it and to appoint a successor or successors to either of them and to fill vacancies.

Section 9.03—Contracts with Trustee or Insurance Company.

The Company shall have the sole right to determine upon the terms and provisions of each and every contract entered into with a Trustee or an insurance company and to amend

and terminate any such contract from time to time. Each such contract may but shall not necessarily include, in addition to such other provisions as may be agreed upon between such Trustee and insurance company and the Company, provisions in substance as follows:

(a) That funds may be held, administered and disbursed as a commingled fund without distinction between principal and income.

(b) That the sole responsibility of any Trustee so designated shall be to hold, invest and reinvest the Trust Fund, as provided in the Trust Agreement or any modification or amendment thereof, and to pay moneys from the Fund to or for the account of the appropriate Pension Committee or on its order from time to time for the purposes of the Plan.

(c) That any such Trustee or insurance company shall be fully protected in paying out or applying moneys from the Fund from time to time upon orders or requisitions of the appropriate Pension Committee.

(d) That funds administered by a Trustee may be invested in each and every kind of property authorized for the investment of Trust Funds under the laws of the State of Minnesota as they exist at the Effective Date of the Plan, including securities issued by the Company, subject to such supervision and regulation as may be imposed on such investments by the Commissioner of Internal Revenue, that Trust Funds may be paid to any insurance company or companies selected and designated by the Company for the purpose of annuities to provide pensions under the Plan, and that the Trustee may, but shall not be required to, acquire and hold such rights and beneficial interests in and under any such contract as the Company may specify.

(e) That all reasonable fees, charges, and expenses and disbursements of any Trustee so designated shall be payable from the Fund and shall constitute a lien thereon until paid.

(f) That each Trustee shall keep accurate and detailed records and accounts of all transactions affecting the Fund under its administration; that such records and accounts shall be open to inspection by any person designated by the Company or by any appropriate Pension Committee at all reasonable times; that at least annually a written account of the administration of the Fund shall be prepared and submitted to the Company and, as to each Pension Unit, to the appropriate Pension Committee; that such accounts shall be available for inspection at reasonable times by the participants in the Pension Unit involved; that upon the expiration of 90 days from the filing of any such account the Trustee shall be forever released and discharged from any liability or accountability to any one as respects the propriety of its acts or transactions shown in such account, except in respect to such as to which the appropriate Pension Committee or the Company shall file written exceptions or objections with the Trustee within such 90-day period; and that the Trustee may take such action from time to time as it may deem necessary or advisable to procure a settlement and allowance of its accounts by any court having jurisdiction.

(g) That the Trustee may resign or be removed by the Company at any time on reasonable notice, and that in the event of such resignation the Company shall appoint a successor.

(h) That in the event of the termination of the Plan, either in its entirety or as to any separate Pension Unit, any Trust Fund then existing and affecting such unit shall nevertheless continue in accordance with the provisions of the Plan.

Any such insurance contract, whether arranged by agreement directly between the Company and the insurance company or between a Trustee and the insurance company, may, but shall not necessarily, be of the deposit administration type.

Section 9.04—Rights of Employees in Fund.

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan, and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent.

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively.

ARTICLE X

Certain Rights of Company

Section 10.01—Amendments.

The Company shall have the sole right from time to time to amend the Plan in such manner as it shall determine, but no amendment shall be effective if it shall attempt or purport to provide for the use or diversion of any of the funds of the Plan or the income therefrom to purposes other than for the exclusive benefit of participants or pensioners, unless such amendment shall be one necessary and then only to the extent

necessary to make the Plan comply with any applicable law, regulation or order or with such provisions of the Internal Revenue Code and regulations issued thereunder as must be complied with to qualify the Trust or any insurance contract and the Plan as affected thereby as exempt from taxation under said Code.

Section 10.02—Termination of Entire Plan.

The Company shall have the sole right at any time to terminate the entire Plan. In the event of such termination, the funds of the Plan shall be used to the extent adequate for the purposes as follows:

(a) To provide for the continuation of pension payments to all pensioners who shall have retired prior to the date of such termination without reference to the order of retirement and to the beneficiaries and contingent annuitants of such pensioners under optional settlements duly elected in accordance with the provisions of the Plan.

(b) To provide for pensions upon subsequent retirement as if the Plan were then in effect to employees who were participants age 65 or over at the date of such termination, without reference to the order in which they shall have reached such age or the order in which they shall retire.

(c) To provide for pensions upon subsequent retirement as if the Plan were then in effect to employees who were participants under age 65 at the date of such termination in the order in which they retire.

The Company shall also have the sole right to terminate the Plan at any time as to any one or more Pension Units. In such event, if funds of the Plan be not then segregated for such Pension Unit, the Actuary shall cause such segregation to be made in the manner and in the amount determined upon by him, in accordance with sound actuarial principles which he

shall determine to be fair and equitable as to all participants and pensioners involved, including those as to whom the Plan is not terminated, and the funds so segregated shall thereafter be held and administered as a separate fund for the exclusive benefit of such Pension Unit for the purpose of providing pensions to them in the same manner and order of preference as is specified in paragraphs (a), (b), and (c) of the preceding section hereof. If funds be already segregated at the time of such termination for such Pension Unit, they shall continue to be held and administered for the benefit of the group for which they were segregated and shall be used for the purposes stated in Section 10.02 hereof and in the order of priority there stated for the exclusive benefit of such group. Funds so segregated before or after such termination, may be held either in a separate Trust Fund or applied to the purchase of insurance or annuity contracts or in any combination of said methods as the Company shall direct. All determinations made by the Actuary in connection therewith shall be final and binding upon all persons in interest.

Section 10.04—Rights of Company in Funds.

In the event of the complete or partial termination of the Plan, the Company shall be entitled to receive any amount or amounts that may remain in the Fund or Funds after satisfaction of all liabilities of the Plan shall be deemed to be satisfied for this purpose if annuity contracts issued by an insurance company providing for the payment by it of all benefits to which participants and pensioners are entitled are procured.

C. Exhibits 4A and 4B to Affidavit of H. Herbert Phillips—Pension Guarantee Letters.

MINNEAPOLIS-MOLINE, INC.,

Hopkins, Minnesota 55343

September 26, 1968

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During our recent contract negotiations the Union proposed and the Company agreed to guarantee retirement benefits under the Retirement Income Plan in the event there should be a closing of the Minneapolis-Moline Plants and resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after distribution of the Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1965, for all credited service as an employee of White Motor Corporation, plus \$2.00 per month for all prior credited service with Minneapolis-Moline, Inc. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund,

by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.

5. The guarantee shall continue in effect for the period of the new Pension Agreement and for a period of one year thereafter, or until renewal of the Pension Agreement, whichever date occurs first.
6. This guarantee shall be automatically cancelled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

W. J. HUNT

Vice President & Treasurer

WJH/mf

MINNEAPOLIS-MOLINE

Division of White Motor Corporation

Hopkins, Minnesota 55343

March 3, 1972

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after the disposition of Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1968, for all credited service as an employee of White Motor Corporation, plus \$2.00 per month for all prior credited service with Minneapolis-Moline, Inc., prior to acquisition by White Motor Corporation. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten (10) or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement or until renewal of the Pension Agreement, whichever date occurs first.
6. The guarantee shall be automatically canceled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,

DONALD B. WYZLIC

Personnel Manager

D. Excerpts from Exhibit 8 to Affidavit of H. Herbert Phillips, Consisting of letter of August 18, 1975 from Defendant to Plaintiffs with Addendum I.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
SAINT PAUL 55101

August 18, 1975

White Motor Corporation

100 Erie View Plaza
Cleveland, Ohio 44114

Attention: John E. Sheehan, President

White Farm Equipment Company

2625 Butterfield Road
Oakbrook, Illinois 60521

Attention: R. E. Kidder, President

Gentlemen:

The State of Minnesota Department of Labor and Industry hereby notifies White Motor Corporation and its wholly-owned subsidiary White Farm Equipment Company (hereinafter jointly referred to as the "Company") of the assessment of a pension funding charge pursuant to the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) ("the Minnesota Pension Act").

By letter dated April 16, 1974, the Company notified the Department of Labor and Industry of the Company's intent to terminate and cease to operate the Minneapolis-Moline Pension Plan for all purposes effective May 1, 1974. Subsequent to said notification, the Pension Division of the Department of Labor and Industry conducted an investigation to determine the respective liabilities and rights, under the Minnesota Pension Act, of the Company and its employees who had been employed at a place of employment in Minnesota and who had participated in the Minneapolis-Moline Pension Plan.

The pertinent information acquired through that investigation is tabulated on the four Addenda attached hereto. Based on that information, the Pension Division has ascertained that under the provisions of the Minnesota Pension Act the Company owes a pension funding charge to the retired,¹ active,² and deferred vested employees listed in Addenda II through IV, respectively. The pension funding charge is expressed in Addendum I as the sum of the present values of the monthly retirement benefits to which the listed employees are entitled, as specified in Addenda II-IV.

Pursuant to Minn. Stat. §181B.12, the pension funding charge liability of the Company to the listed employees is to be satisfied by the purchase of prepaid deferred annuities payable to each employee upon their reaching normal retirement age, or immediately to those already receiving benefits under the pension plan, in an amount equal to the monthly retirement benefit which each employee has earned and, where applicable, to the employee's surviving spouse in an amount equal to the survivorship benefit which the employee has earned. The cost of the purchase of said annuities need not be equivalent to the pension funding charge indicated in Addendum I. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of distribution of the annuity amount. Proof of such purchase shall be provided to the Pension Division within 72 hours thereof.

¹ Some of the names listed in Addendum II are surviving spouses who are now receiving the benefits indicated pursuant to the survivorship option exercised by a deceased employee.

² The Company shall not owe a pension funding charge for any employee who the Department determines has been retained in employment without loss of pension credits under a new pension plan.

A hearing will be provided for the determination and resolution of any disputed issues concerning the assessed pension funding charge liability if a written Request for Hearing is served upon the Department of Labor and Industry within thirty (30) days of receipt of this letter. Such Request for Hearing shall include a short and plain statement of all issues on which a hearing is desired, the determination sought, and the grounds therefor. Issues which may be raised included, but are not limited to: objections to the assessed pension funding charge liability, manner and method of satisfaction of said liability, and determination of amounts settled or compromised. Within ten (10) days of receipt of a timely-served Request for Hearing, the Department of Labor and Industry shall appoint a hearing officer and commence contested case proceedings pursuant to Minn. Reg. Atty. Gen. 407, Rule 4.

Unless objection is made hereto in the manner specified above, the assessed pension funding charge liability shall be deemed certified pursuant to Minn. Stat. § 181B.11 and shall be due and payable in the manner heretofore described sixty (60) days from receipt of this notice. Pursuant to Minn. Stat. § 181B.11, if said liability is not satisfied within the time provided, interest thereon shall accrue from the date due at the rate of eight percent (8%) per annum until the liability and interest are paid.

DEPARTMENT OF LABOR
AND INDUSTRY
E. I. MALONE
Commissioner

 ADDENDUM I

 MINNEAPOLIS-MOLINE
HOURLY PENSION PLAN

SUMMARY OF FUNDING CHARGE LIABILITY

Addendum II - Retirees

- | | |
|--|--------------|
| 1. Sum of Present Values of Monthly Benefits* as of April 30, 1974 | \$13,440,936 |
| 2. Sum of Present Values of Supplemental Benefits** as of April 30, 1974 | 689,258 |

Addendum III - Active Employees

- | | |
|---|-----------|
| Sum of Present Values of Monthly Benefits* as of April 30, 1974 | 3,346,640 |
|---|-----------|

Addendum IV - Deferred Vested Employees

- | | |
|---|-----------|
| Sum of Present Values of Monthly Benefits*** as of April 30, 1974 | 1,673,219 |
|---|-----------|

PENSION FUNDING CHARGE	\$19,150,053
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* Present values of the individual 1973-level benefits were determined by multiplying the present values of the 1972-level benefits (supplied by White Motor Corporation based on an interest assumption of 5-3/4% per annum) by the ratio of the 1973-level benefits to the 1972-level benefits.

** Present values of 6% monthly annuities certain payable from May, 1974, to expiration date.

*** Present values as supplied by White Motor Corporation.